

The IRS SOP contains many objectives that have the potential to transform the modernization of online accounts, such as improving self-service options, building status tracking tools, and expanding digital response options. As the IRS implements its SOP, TAS will continue to advocate for it to develop online account functionality with a taxpayer-centric approach that prioritizes the experience and needs of all taxpayers and tax professionals while incorporating input from stakeholders.⁶⁹

On September 22, 2023, OMB issued Memorandum M-23-22, *Delivering a Digital-First Public Experience*, which provides guidance to agencies on how to design and deliver websites and digital services to the public. It includes and summarizes many best practices for digital services, including:

- Provide services to the public in a manner that maximizes self-service or transaction completion;
- Design and deliver digital options with users at the center of the experience;
- Prioritize customization to help users complete more relevant tasks more quickly;
- Ensure accessibility for people of diverse abilities;
- Provide content that is authoritative and easy to understand;
- Ensure the design of digital services incorporates appropriate privacy safeguards; and
- Build a digital workforce capable of delivering information and services to the public.⁷⁰

Online accounts with robust services that incorporate the digital-first public experience best practices are an important tool to improve the taxpayer experience and raise taxpayers' overall satisfaction and trust in the IRS, and TAS will continue to advocate that the IRS implement these best practices.

Objective 7 for FY 2025 – TAS will work with the IRS to incorporate the digital-first public experience best practices for online accounts available to individuals, businesses, and tax professionals.

- Activity 1: Monitor IRS implementation of the SOP objectives relating to online accounts and provide recommendations to ensure the IRS makes timely progress toward developing online account functionality with a taxpayer-centric approach that prioritizes the experience and needs of individual and business taxpayers and tax professionals.
- Activity 2: Provide recommendations to the IRS for the expansion of services available within Individual Online Accounts, Business Tax Accounts, and Tax Pro Accounts.

8. IMPROVE ADMINISTRATION OF INTERNATIONAL INFORMATION RETURN PENALTIES BY ELIMINATING SYSTEMIC ASSESSMENTS, OFFERING A FIRST-TIME ABATEMENT WAIVER, AND INCREASING TAXPAYER AWARENESS

U.S. persons who receive money from abroad, have foreign financial interests, or engage in cross-border activities are potentially subject to a wide range of U.S. reporting requirements. Many of the international information return requirements can result in significant penalties when a filing is late, incomplete, or inaccurate, even if the information reported relates to income that isn't taxable. These penalties are broadly applied, needlessly harsh, and often unexpected, harming unsuspecting lower- and middle-income taxpayers, small businesses, and immigrants.⁷¹ In FY 2025, TAS will continue to work with the IRS to develop a sounder approach to this penalty regime.

69 IRS, Pub. 3744, IRS Inflation Reduction Act Strategic Operating Plan (Apr. 2023), <https://www.irs.gov/pub/irs-pdf/p3744.pdf>.

70 OMB Memorandum No. M-23-22, *Delivering a Digital-First Public Experience* (Sept. 2023) (implementing the 21st Century Integrated Digital Experience Act, Pub. L. No. 115-336, 132 Stat. 5025 (2018)), <https://www.whitehouse.gov/omb/management/ofcio/delivering-a-digital-first-public-experience/>.

71 See National Taxpayer Advocate 2023 Annual Report to Congress 101 (Most Serious Problem: *International: The IRS's Approach to International Information Return Penalties Is Draconian and Inefficient*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_08_International.pdf.

In many cases, the failure to file is simply due to the taxpayer being unaware of international information return reporting obligations. This is particularly true when there are no federal tax consequences involved, such as when a taxpayer receives a nontaxable gift. Additional transparency and clarity regarding international information return requirements could contribute to compliance, which would be beneficial to taxpayers and the IRS. For example, the IRS should update Schedule B (Form 1040), Interest and Ordinary Dividends, and the related instructions to include foreign gifts as potentially reportable transfers.

Another significant issue arises because most of these penalties are systemically assessed at the time the IRS receives a late information return, which means taxpayers have no preassessment mechanism for disputing the penalty. The IRS use of systemic penalties creates hardships for taxpayers, causes substantial inequities and inefficiencies in tax administration, and rests on a questionable legal foundation.⁷² Although many of these penalties are ultimately abated by the IRS for administrative reasons, including that the taxpayer filed returns timely or the IRS granted reasonable cause relief, the process may come at a great financial cost and emotional toll for taxpayers. For example, for the most frequently assessed international information return penalties (IRC §§ 6038 and 6038A), TAS has found that, averaged across calendar years 2018–2021, the abatement percentage as measured by number of penalties was 74 percent and by dollar value was 84 percent.⁷³ Since taxpayers and the IRS expend significant time, energy, and money addressing penalties that the IRS should not have assessed in the first place, the IRS should stop systemically assessing these penalties. Furthermore, these penalties should be directly eligible for first-time abatement, ideally the systemic first-time abatement for which the National Taxpayer Advocate has broadly advocated.⁷⁴ Offering an international information return first-time abatement waiver would help extend equitable treatment to taxpayers and bring administrative efficiency to the IRS.

Objective 8 for FY 2025 – TAS will advocate to end systemic assessment of international information return penalties and to develop a first-time abatement waiver specific to these penalties.

- Activity 1: Continue to advocate for the IRS to end the systemic assessment regime for Chapter 61 international information return penalties.
- Activity 2: Continue to meet with the IRS Office of Servicewide Penalties and the Taxpayer Experience Office to discuss extending eligibility for first-time abatement to all international information return penalties regardless of whether the underlying return was filed late.

72 The IRS's position is that the penalties in Title 26, Subtitle F, Chapter 61, Subchapter A, Part III are not subject to deficiency procedures and are immediately assessable. The National Taxpayer Advocate's position, consistent with that of the U.S. Tax Court in *Farhy v. Comm'r*, 160 T.C. No. 6 (Apr. 3, 2023), *rev'd and remanded*, No. 23-1179, 2024 WL 1945977 (D.C. Cir. May 3, 2024), is that these penalties do not contain or cross-reference language authorizing the IRS to treat them as assessable, and, therefore, the U.S. Department of Justice would need to institute a civil action to recover the penalties. In May 2024, the D.C. Circuit Court of Appeals reversed the Tax Court's decision in *Farhy*, holding that "the statute's text, structure, and function" indicated the penalties were assessable. *Farhy v. Comm'r*, No. 23-1179, 2024 WL 1945977, at *10 (D.C. Cir. May 3, 2024). According to the rule laid out in *Golsen v. Comm'r*, 54 T.C. 742 (1970), the D.C. Circuit's ruling sets a precedent for the Tax Court in cases within the D.C. Circuit's appellate jurisdiction. The Tax Court addressed the applicability of the *Golsen* rule to *Farhy* in a recent case in which the Tax Court rejected the government's suggestion that it reconsider *Farhy* and explained that "the mere fact that *Farhy* is currently on appeal at the D.C. Circuit is insufficient. This case is appealable to the Eighth Circuit, and therefore any ruling from the D.C. Circuit would not be binding on this proceeding." *Mukhi v. Comm'r*, 162 T.C. No. 8 (Apr. 8, 2024) (citing to *Golsen*, 54 T.C. at 757). It remains to be seen if the IRS will appeal the decision in *Mukhi*, which followed the Tax Court's earlier decision that the IRS does not have assessment authority for these penalties, which could result in a split of opinion between circuits. See also National Taxpayer Advocate 2020 Annual Report to Congress 119 (Most Serious Problem: *International: The IRS's Assessment of International Penalties Under IRC §§ 6038 and 6038A Is Not Supported by Statute, and Systemic Assessments Burden Both Taxpayers and the IRS*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2021/01/ARC20_MSP_08_International.pdf.

73 IRS, CDW, Business Master File. Because of such factors as the broad penalty relief provided in IRS Notice 2022-36, 2022-36 I.R.B. 188, Penalty Relief for Certain Taxpayers Filing Returns for Taxable Years 2019 and 2020, and processing delays due to COVID-19, penalty data in any given recent year may not be illustrative of long-term trends. For this reason, we present a four-year average.

74 For further discussion, see National Taxpayer Advocate Fiscal Year 2024 Objectives Report to Congress 21 (Systemic Advocacy Objective: *Implement Systemic First Time Abatement But Allow Substitution of Reasonable Cause*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2023/06/JRC24_SAO_SystAdvObjs.pdf.

- Activity 3: Advocate for updating the Internal Revenue Manual (IRM) to require review of reasonable cause relief requests before assessing penalties when these requests are submitted in conjunction with late filed international information returns potentially giving rise to penalties.
- Activity 4: Collaborate with the IRS to discuss the possibility of adding language to the Schedule B and related instructions to include foreign gifts as potentially reportable.

9. REDUCE COMPLIANCE CHALLENGES FOR TAXPAYERS ABROAD

Taxpayers abroad face significant challenges in meeting their U.S. tax obligations.⁷⁵ They are plagued by a complex tax code and declining levels of IRS customer service. They can be liable for severe penalties for failing to file or incorrectly filing their tax returns and complicated international information returns, of which they may not be aware. Yet, they have no access to in-person IRS assistance and almost no ability to access free return preparation assistance. Additionally, taxpayers abroad often encounter significant delays in receiving correspondence from or sending correspondence to the IRS and have insufficient timeframes in which to respond to key IRS notices, which causes them to lose critical administrative, due process, and judicial rights. Other challenges include difficulties in obtaining Individual Taxpayer Identification Numbers and checking on their application status, access to only one dedicated IRS telephone line (that is not toll-free), language barriers, problems accessing online resources, and limited payment and refund options.

Despite the multitude of challenges facing taxpayers abroad, the IRS offers only limited assistance, and many IRS systems are still not compatible with the needs of this population. The complexity of U.S. tax laws and the lack of accessible IRS customer service and assistance burdens taxpayers, especially those abroad, causes frustration, and impedes compliance. To protect taxpayer rights and improve voluntary compliance for this population, the IRS needs to educate and assist taxpayers abroad, improve customer service options, and reduce the challenges these taxpayers face.

Objective 9 for FY 2025 – TAS will identify compliance challenges for taxpayers abroad and make administrative recommendations to minimize burdens imposed on this population.

- Activity 1: Meet with stakeholders and representatives for international taxpayers to better understand the difficulties they face in complying with their U.S. tax obligations and make recommendations to the IRS to reduce compliance burdens.
- Activity 2: Work with the IRS to identify which IRS forms and publications individual taxpayers abroad use most and recommend the IRS prioritize them for translation into languages other than English.
- Activity 3: Review IRM provisions and IRS correspondence products to identify circumstances in which taxpayers abroad do not have sufficient time to respond and make recommendations to the IRS to revise such notices and procedures to provide additional time.
- Activity 4: Review the IRS's FAQs about international individual tax matters applicable to U.S. taxpayers abroad and provide specific suggestions to the IRS about how to improve that content to make it more helpful to taxpayers abroad.

⁷⁵ National Taxpayer Advocate 2023 Annual Report to Congress 116 (Most Serious Problem: *Compliance Challenges for Taxpayers Abroad: Taxpayers Abroad Continue to Be Underserved and Face Significant Challenges in Meeting Their U.S. Tax Obligations*), https://www.taxpayeradvocate.irs.gov/wp-content/uploads/2024/01/ARC23_MSP_09_Compliance-Abroad.pdf.