

## Deloitte Tax looks at FBAR failure-to-file penalties, 2023 qualified intermediary agreements

New resources from Deloitte Tax LLP's Global Information Reporting group address a recent US Supreme Court ruling on the application of the civil penalty for a non-willful failure to file Form 114, *Report of Foreign Bank and Financial Accounts* (FBAR), and important considerations for taxpayers regarding the 2023 qualified intermediary (QI) withholding agreement.

### FBAR failure-to-file penalties

The Supreme Court on February 28 held in *Bittner v. United States* that the maximum civil penalty for a non-willful failure to file an FBAR report accrues on a per-report basis and not on a per-account basis. As a result of this decision, the maximum civil penalty for a non-willful failure to file a complete and timely FBAR is limited to \$10,000, adjusted for inflation.

[URL: https://www.supremecourt.gov/opinions/22pdf/21-1195\\_h3ci.pdf](https://www.supremecourt.gov/opinions/22pdf/21-1195_h3ci.pdf)

A tax alert from the Global Information Reporting group discusses FBAR filing rules and the potential impact of the *Bittner* decision on taxpayers.

[URL: https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230324\\_2\\_supplA.pdf](https://dhub.blob.core.windows.net/dhub/Newsletters/Tax/2023/TNV/230324_2_supplA.pdf)

### QI agreement

The Treasury Department and the IRS late last year issued Rev. Proc. 2022-43 finalizing the 2023 qualified intermediary withholding agreement. The 2023 QI agreement contains significant changes from the 2017 QI agreement, and the new rules apply to QI agreements in effect on or after January 1, 2023.

[URL: https://www.irs.gov/pub/irs-drop/rp-22-43.pdf](https://www.irs.gov/pub/irs-drop/rp-22-43.pdf)

A new "5x5" reference guide from the Global Information Reporting group identifies five insights taxpayers need to know about the 2023 agreement and five actions taxpayers should consider as they implement it. (A tax alert summarizing Rev. Proc. 2022-43 was released last December.)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-5x5-2023-qi-agreements.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/Tax/us-tax-5x5-2023-qi-agreements.pdf)

[URL: https://www2.deloitte.com/content/dam/Deloitte/us/Documents/us-deloitte-finalized-2023-qi-agreement-release.pdf](https://www2.deloitte.com/content/dam/Deloitte/us/Documents/us-deloitte-finalized-2023-qi-agreement-release.pdf)

— Michael DeHoff  
Tax Policy Group  
Deloitte Tax LLP

This communication contains general information only, and none of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms or their related entities (collectively, the “Deloitte organization”) is, by means of this communication, rendering professional advice or services. Before making any decision or taking any action that may affect your finances or your business, you should consult a qualified professional adviser.

No representations, warranties or undertakings (express or implied) are given as to the accuracy or completeness of the information in this communication, and none of DTTL, its member firms, related entities, employees or agents shall be liable or responsible for any loss or damage whatsoever arising directly or indirectly in connection with any person relying on this communication. DTTL and each of its member firms, and their related entities, are legally separate and independent entities.

#### **About Deloitte**

Deloitte refers to one or more of Deloitte Touche Tohmatsu Limited (“DTTL”), its global network of member firms, and their related entities (collectively, the “Deloitte organization”). DTTL (also referred to as “Deloitte Global”) and each of its member firms and related entities are legally separate and independent entities, which cannot obligate or bind each other in respect of third parties. DTTL and each DTTL member firm and related entity is liable only for its own acts and omissions, and not those of each other. DTTL does not provide services to clients. Please see [www.deloitte.com/about](http://www.deloitte.com/about) to learn more.

Deloitte provides industry-leading audit and assurance, tax and legal, consulting, financial advisory, and risk advisory services to nearly 90% of the Fortune Global 500® and thousands of private companies. Our professionals deliver measurable and lasting results that help reinforce public trust in capital markets, enable clients to transform and thrive, and lead the way toward a stronger economy, a more equitable society and a sustainable world. Building on its 175-plus year history, Deloitte spans more than 150 countries and territories. Learn how Deloitte’s approximately 415,000 people worldwide make an impact that matters at [www.deloitte.com](http://www.deloitte.com).