

November 12, 2024

Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224
Attn: Andres Garcia
Email: pra.comments@irs.gov

Re: MacArthur Foundation Comments with respect to OMB Control Number: 1545-0047
Specifically Forms 926, 8865, and 5471 related to direct and indirect investment vehicles

Dear Mr. Garcia:

The John D. and Catherine T. MacArthur Foundation (“the Foundation”) is responding to the above-referenced request for comments regarding tax forms required to be filed by tax-exempt organizations. The Foundation is an Illinois not-for-profit corporation recognized as exempt under Section 501(c)(3) of the Internal Revenue Code. The Foundation’s charitable mission is to advance a more just, verdant, and peaceful world by funding a range of programs and initiatives designed to drive meaningful social change. For additional details on our work, please visit macfound.org.

As a tax-exempt organization, the Foundation is required to comply with a range of reporting requirements, particularly concerning direct and indirect foreign investments. Our comments focus on federal tax compliance related to these foreign filings, specifically Forms 926, 8865, 5471, 8621, and 8858, which we submit as attachments to Form 990-T, Exempt Organization Business Income Tax Return. The current foreign reporting forms required of exempt organizations like ours are redundant and burdensome, often providing limited additional information to the U.S. Treasury beyond what is already included in existing forms.

The following forms have been especially burdensome to administer, with no commensurate benefit to the Internal Revenue Service or the public:

- Form 926: Return by a Transferor of Property to a Foreign Corporation
- Form 8865: Return of U.S. Persons with Respect to Certain Foreign Partnerships
- Form 5471: Information Return of U.S. Persons with Respect to Certain Foreign Corporations

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Administrative and Financial Burden

The administrative and financial cost of preparing these forms is considerable. In 2022, we spent approximately 220 hours of internal time gathering and reviewing the required data; in 2023, this increased to approximately 250 hours due to additional reporting demands. In both years, we relied on Crowe LLP, a financial and accounting services firm, for specialized assistance with all foreign filing preparations. Their expertise came at an annual cost of over \$100,000, contributing to the analysis and preparation of around 300 forms in 2022 and 230 in 2023, totaling approximately 1,500 pages of documentation.

These extensive hours and associated costs reflect the labor-intensive nature of foreign filing compliance, which diverts valuable resources away from the Foundation's programmatic work. We believe these reporting requirements impose a disproportionate burden on tax-exempt organizations and yield little practical utility, as they do not materially aid the Treasury's objectives.

Background on Foreign Investment Reporting Complexity

Foundations like ours often maintain diversified investment portfolios that include both domestic and foreign assets, generally held in pooled funds with other investors of different types and managed by an investment manager which makes the underlying investment decisions. These assets span a range of classes, such as public and private equity, fixed income credit, real estate, and other assets. Typically held in a variety of structures, including both domestic and foreign partnerships or corporations, these investments add significant complexity to compliance requirements.

Foreign investments may trigger multiple filing obligations when certain ownership or financial thresholds are met, even though the foundation does not maintain a controlling interest or manage the choice of investment. These reporting requirements generate substantial administrative overhead due to complex tracking and look-through rules, where foundations may need to examine lower-level holdings to determine required reporting.

Lack of Practical Utility for IRS and Treasury

The primary utility of these forms appears to be limited to collecting information on the holdings and transfers of foreign assets. However, for tax-exempt organizations, much of this information is not relevant for determining tax liability. Exempt organizations are generally taxed only on their unrelated business taxable income (UBTI), and private foundations additionally pay a 1.39% excise tax on net investment income (NII). Reporting UBTI and NII does not require the extensive foreign disclosures currently mandated.

Furthermore, there are additional reasons why the burden on foundations should be relieved including the following:

1. The information gathered does not typically relate to taxable income, except for Subpart F income or Global Intangible Low-Taxed Income (GILTI), which refers to certain foreign income from controlled foreign corporations that may be subject to U.S. taxation. Thus, most of the data provided is informational and does not influence the Foundation's tax calculation or liability.
2. For public charities and private foundations, these forms do not capture UBTI details. Domestic partnership filings, such as the Form 1065 Schedule K-1, already include this relevant information and satisfy the IRS and Foundation's tax reporting needs.
3. While we understand Treasury's interest in foreign ownership transparency, there are existing channels, such as Treasury International Capital System (TICS) Form SLT filings, that collect similar information in a more efficient and timely manner.

Recommendations to Improve Efficiency and Reduce Redundancy

The Foundation proposes the following regulatory adjustments to foreign filing requirements to streamline compliance for tax-exempt organizations:

1. Increase Thresholds and Adjust Requirements
 - We recommend adjusting the ownership and transfer thresholds that trigger Form 926 and 8865 filing requirements. Currently, a 10% ownership interest or a \$100,000 cash transfer triggers a filing. Changing this to require both 10% ownership and a \$100,000 cash transfer would reduce unnecessary filings for transactions that lack material significance.
2. Simplify Reporting for Private Foundations
 - Only require a Form 5471 filing when there is a Subpart F income inclusion for private foundations. Alternatively, a Subpart F disclosure line could be added to Form 990-PF to report the necessary information without requiring a separate, lengthy Form 5471.
3. Eliminate Redundant Reporting
 - Domestic partnerships already report capital contributions on Schedule K-1, which includes necessary details on foreign investment holdings. Rather than duplicate information on Forms 8865 and 926, allow these forms to be submitted once by the partnership for all investors.
4. Consider Annual Reporting Through TICS Form SLT
 - TICS Form SLT filings could serve as a consolidated reporting mechanism, listing foreign investments without requiring Forms 926, 8865, and 5471. Leveraging electronic filing and interagency data sharing could further streamline compliance and data accuracy.

Closing Remarks

For the 2022 and 2023 tax years, the Foundation dedicated approximately 220 hours and 250 hours, respectively, to compiling data for these forms. Engaging Crowe LLP's expertise added further financial costs exceeding \$100,000 per year. This considerable administrative and financial burden could be better allocated toward advancing the Foundation's mission and programming and would not hamper the IRS's compliance and informational requirements.

Thank you in advance for your consideration of these recommendations, which we believe would significantly reduce the compliance burden on tax-exempt organizations. Please feel free to reach out to us with any questions or if you require further information.

Sincerely,

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