



Update on International Tax and Foreign Reporting

October 10, 2018

6:00 p.m. – 8:00 p.m.

Quinnipiack Club

New Haven, CT

CT Bar Institute, Inc.

CT: 1.0 CLE Credits (General)

NY: 1.0 CLE Credits (AOP)

Lawyers' Principles of Professionalism

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

Event: October 10, 2018 Tax Section Meeting

Luke T. Tashjian, Chair

Location: Quinnipiack Club, 221 Church Street, New Haven, CT

Program Agenda

1. Registration 6:00 -6:30 PM
2. Dinner 6:30 PM
3. Business Session 6:30 -7:00 PM:
 - a. Approval of last meeting minutes – Lindsay LaCava Secretary/Treasurer
 - b. Treasurer report – Lindsay LaCava Secretary/Treasurer
 - c. Subcommittee reports
4. CLE Session - *International Tax and Reporting Requirements* 7:00 – 8:00 PM
 - a. Introduction of Andrew Mitchell
 - b. Presentation
 - i. New GILTI Form 8992
 - ii. Updated Form 5471 (for GILTI and more)
 - iii. Outbound Transfers and Form 926
 - c. Questions & Answers
5. Adjourn 8:00 PM



Andrew Mitchel
Attorney at Law

Andrew Mitchel LLC
65 Main Street
Centerbrook, CT 06409

Tel. 860-767-4975
Fax 860-754-0954

Representative Clients

- Private equity funds / managers
- Law firms and accounting firms
- U.S. companies creating, acquiring or reorganizing foreign entities.
- Non-U.S. companies creating, acquiring or reorganizing U.S. entities.
- Non-resident individuals with U.S. assets
- Resident individuals with non-U.S. assets

Professional Associations

- Member Connecticut Bar Association
- Member Connecticut Society of Certified Public Accountants
- Member International Fiscal Association

Education, Licenses & Certifications

- LL.M. in Taxation, New York University School of Law
- Juris Doctorate, University of Connecticut School of Law
- Admitted to the bar in Connecticut



Background

Andrew Mitchel is an international tax attorney who provides U.S. tax advice to businesses and individuals with cross-border activities. With over 29 years of experience as a tax advisor, Mr. Mitchel has gained vast knowledge on the taxation of cross-border activities.

Prior to founding his own firm in 2004, Mr. Mitchel was a Senior Manager of International Tax Planning at PepsiCo, Inc. At Pepsi, Mr. Mitchel provided tax advice on acquisitions, divestitures, and restructurings throughout the world. Mr. Mitchel also worked in the International Tax Department of United Technologies Corporation, after beginning his career in public accounting.

Professional and Industry Experience

Mr. Mitchel's international tax experience has allowed him to:

- Provide tax planning advice on acquisitions, divestitures and restructurings to multinational corporations.
- Advise closely held businesses, headquartered both outside the United States and inside, with U.S. and foreign operations.
- Give advice to large and small companies when they are creating, acquiring or reorganizing U.S. / foreign entities.

Publications and Speaking Engagements

Mr. Mitchel is a frequent speaker before numerous professional organizations and he maintains a website (www.andrewmitchel.com) with over 1,100 tax charts. In addition, Mr. Mitchel blogs at International Tax Blog (<http://intltax.typepad.com>), has a YouTube Channel at www.youtube.com/AndrewMitchelTax, and publishes tax flowcharts at www.Tax-Charts.com. Attorney Mitchel is an Adjunct Professor of Law at Quinnipiac University School of Law where he teaches International Tax.

U.S. International Tax Compliance Update

Connecticut Bar Association, Tax Section
October 10, 2018 Meeting
Quinnipiack Club, New Haven, CT

Andrew Mitchel, Esq.

Andrew Mitchel LLC - Attorney at Law

65 Main Street, Centerbrook, Connecticut 06409

Ph. 860-767-4975

Fax 860-756-0954

Email: andrew@andrewmitchel.com

Website: www.andrewmitchel.com

Blog: www.intltax.typepad.com

Tax Flowcharts: www.tax-charts.com

YouTube: www.youtube.com/user/AndrewMitchelTax

U.S. International Forms Discussed Last Year

- FBAR - Foreign accounts
- 8938 - Foreign financial assets
- 5471 - Foreign corporations
- 8865 - Foreign partnerships
- 8858 - Foreign disregarded entities
- 8833 - Treaty disclosure
- 8621 - PFICs

Forms To Be Discussed Today

- New Form 8992 – U.S. Shareholder Calculation of GILTI
- New Schedule I-1 of Form 5471
- Form 926 – Certain Transfers of Property to Foreign Corporations

What we won't discuss

Form **965**
(January 2019)

Department of the Treasury
Internal Revenue Service

**Inclusion of Deferred Foreign Income
Upon Transition to Participation Exemption System**

► **Attach to tax return.**

► **Go to *www.irs.gov/Form965* for instructions and the latest information.**

OMB No. 1545-0123

**Section 250 Deduction for Foreign-Derived Intangible Income (FDII)
and Global Intangible Low-Taxed Income (GILTI)**

► Go to www.irs.gov/Form8993 for instructions and the latest information.

GILTI

(as charged)

What is GILTI

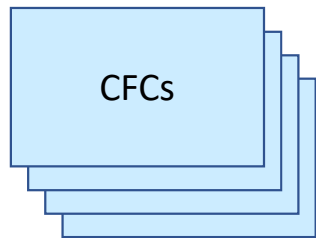
- Global intangible low-taxed income (“GILTI”)

- Essentially a new type of Subpart F Income
- Deemed distribution to 10% U.S. shareholders

- Applies to virtually all CFCs

GILTI - A Two-Step Process

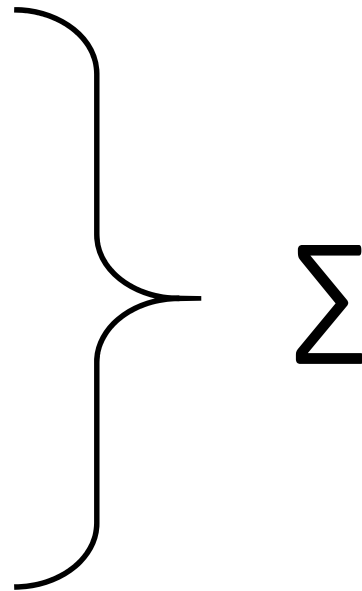
Separate CFC
calculations



Tested income (loss)
QBAI
Interest expense

Forms 5471

U.S. Shareholder
calculations



GILTI

Form 8992

Form **8992**

(December 2018)

Department of the Treasury
Internal Revenue Service**U.S. Shareholder Calculation of Global Intangible
Low-Taxed Income (GILTI)**► Go to www.irs.gov/Form8992 for instructions and the latest information.

OMB No. 1545-0123

Attachment
Sequence No. **992**

Name of person filing this return

A Identifying number

Name of U.S. shareholder

B Identifying number

Part I Net Controlled Foreign Corporation (CFC) Tested Income

- | | | | |
|----------|--|----------|-----|
| 1 | Sum of Pro Rata Share of Net Tested Income (total from Form 8992–Schedule A, column (e), line 1) | 1 | |
| 2 | Sum of Pro Rata Share of Net Tested Loss (total from Form 8992–Schedule A, column (f), line 1) | 2 | () |
| 3 | Net CFC Tested Income (combine line 1 and line 2) (if zero or negative, stop here) | 3 | |

Part II Calculation of Global Intangible Low-Taxed Income (GILTI)

- | | | | |
|-----------|--|-----------|--|
| 1 | Net CFC Tested Income (from Part I, line 3) | 1 | |
| 2a | Pro Rata Share of QBAI multiplied by 10% (total from Form 8992–Schedule A, column (g), line 1) | 2a | |
| b | Specified Interest Expense (total from Form 8992–Schedule A, column (i), line 1) | 2b | |
| c | Net Deemed Tangible Income Return (DTIR) (subtract line 2b from line 2a) (if zero or less, enter -0- here) | 2c | |
| 3 | GILTI (subtract line 2c from line 1) (see instructions) | 3 | |

For Paperwork Reduction Act Notice, see separate instructions.

Cat. No. 37816Y

Form **8992** (12-2018)

Form 5471

Old Form 5471

- Main form, pages 1 – 4
- Schedule J – E&P
- Schedule M – Related Transactions
- Schedule O – Organization & Reorganization (2 pages)
- **Total of 8 pages**

New Form 5471

- Main form, pages 1 – 6
- Schedule E – Taxes Paid (2 pages)
- Schedule H – Current year E&P
- Schedule I-1 – GILTI information
- Schedule J – E&P (# of lines doubled)
- Schedule M – Related Transactions
- Schedule O – Org. & Reorganization
- Schedule P – Previously taxed income
- **Total of 14 pages**

SCHEDULE I-1
(Form 5471)

(September 2018)

Department of the Treasury
Internal Revenue Service

Information for Global Intangible Low-Taxed Income

OMB No. 1545-0704

► Attach to Form 5471.

► Go to www.irs.gov/Form5471 for instructions and the latest information.

Name of person filing Form 5471		Identifying number
Name of foreign corporation	EIN (if any)	Reference ID number (see instructions)

Separate Category (enter code—see instructions) ►

		Functional Currency	Conversion Rate	U.S. Dollars
1 Gross income	1			
2 Exclusions				
a Effectively connected income	2a			
b Subpart F income	2b			
c High-tax exception income per section 954(b)(4)	2c			
d Related party dividends	2d			
e Foreign oil and gas extraction income	2e			
3 Total exclusions (total of lines 2a–2e)	3			
4 Gross income less total exclusions (line 1 minus line 3)	4			
5 Deductions properly allocable to amount on line 4	5			
6 Tested income (loss) (line 4 minus line 5) (see instructions for line 6)	6			
Other Amounts (see instructions)				
7 Tested foreign income taxes	7			
8 Qualified business asset investment (QBAI)	8			
9 Interest expense	9			

For Paperwork Reduction Act Notice, see instructions.

Cat. No. 71400M

Schedule I-1 (Form 5471) (9-2018)

Questions on GILTI?

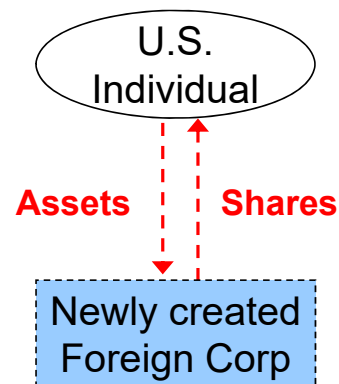
Form 926

Form 926

- Must be filed when a U.S. person
 - transfers property
 - to a foreign corporation
 - in an exchange described in Code §§332, 351, 354, 355, 356, or 361
- Only applies if the transferor is a U.S. person
 - E.g, a U.S. citizen, U.S. tax resident, U.S. corporation, U.S. trust or estate
 - A transfer from a foreign corporation to another foreign corporation would not need to be reported on Form 926

Typical Transfer Requiring Form 926

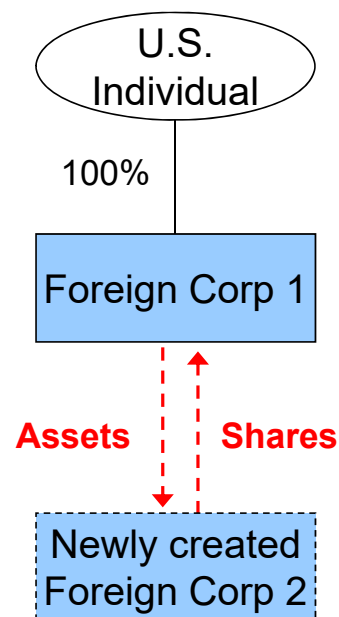
Outbound Section 351 Exchange



 Blue means non-U.S. person / non-U.S. entity

Transfer Not Requiring Form 926

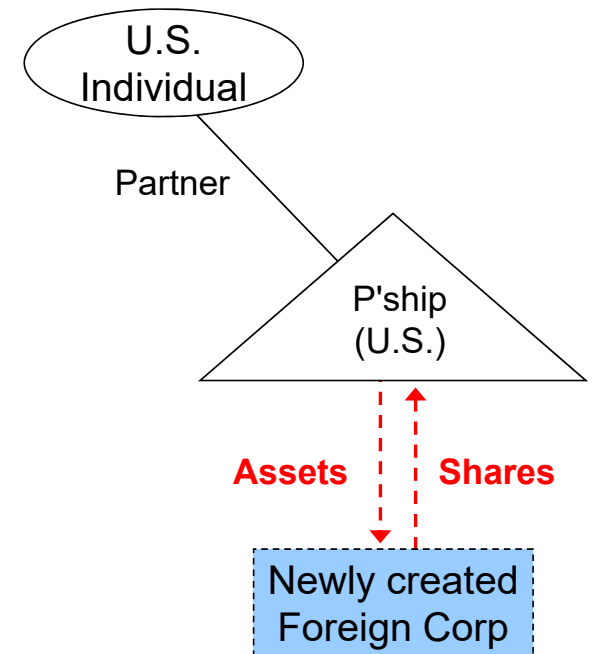
Foreign-to-Foreign Section 351 Exchange



Transfers by partnerships

- If the transferor is a partnership (domestic or foreign), the domestic partners of the partnership, not the partnership itself, are required to comply with section 6038B and file Form 926
- Each domestic partner is treated as a transferor of its proportionate share of the property

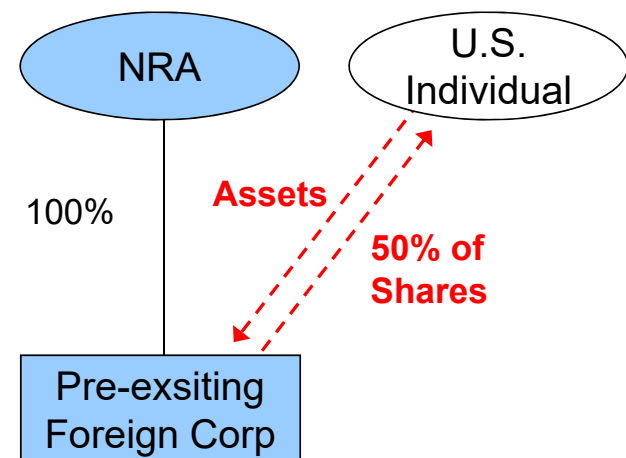
Outbound Sec. 351 Exchange By a Partnership



Only For Nonrecognition Transactions

- Must be a nonrecognition transaction
- If the transfer does not qualify for nonrecognition, then the form is not required

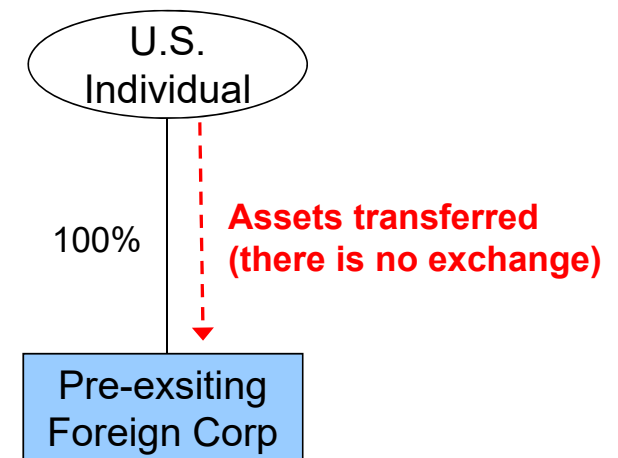
Not a Sec. 351 Exchange
& No 926 Required



Capital Contributions

- A capital contribution is a transfer of property to a corporation without receiving anything (such as shares) in exchange
- If there is no exchange, there is no 351 exchange, right?
- Wrong. Code §367(c)(2) deems there to be an exchange if the transferors own at least 80% of the foreign corp

Reportable on 926???

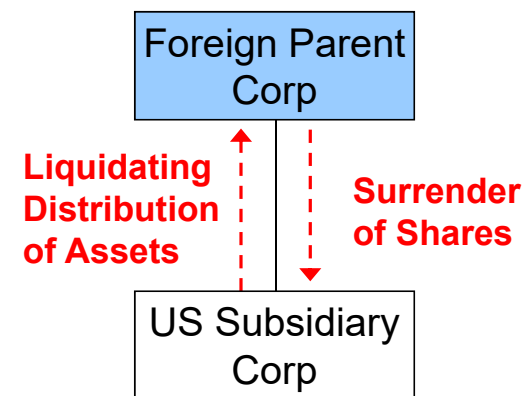


Yes, Reportable

Outbound 332 Liquidation

- The transfer by a U.S. person can be an “upstream” transfer, such as in an outbound 332 liquidation into a foreign parent
- Reportable on Form 926

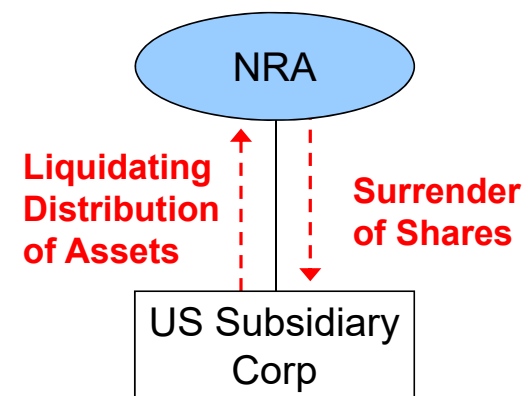
Outbound Liquidation



Outbound 331 Liquidations Not Reportable

- An upstream transfer by a U.S. person that is a taxable transfer (i.e., not a nonrecognition transaction)
- Not reportable on Form 926
 - (for 2 reasons: not a nonrecognition transaction, and not a transfer to a foreign corporation)

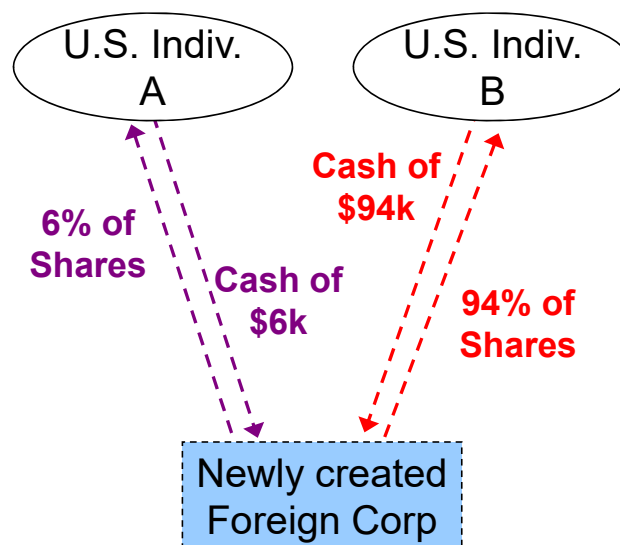
Outbound Liquidation



Exception for Certain Cash Transfers

- Need to file for cash if:
 - own at least 10% after the exchange,
 - or
 - transfers 12 month period > \$100,000
- Stated another way, don't need to file if own less than 10% after the exchange and transfers during 12 month period are less than \$100,000

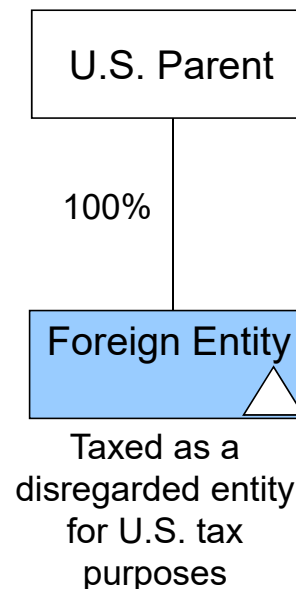
Cash in Outbound 351 Exchange



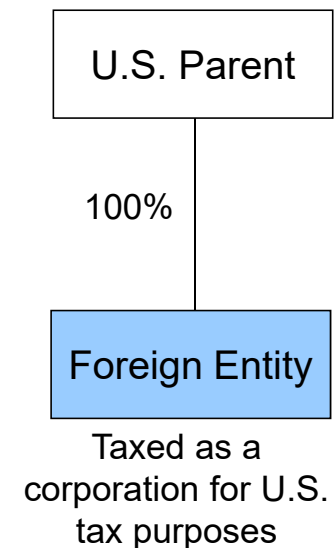
“Un-Check-the-Box Election”

- If a U.S. person owns a foreign disregarded entity and an election is made to change the classification of the foreign entity to be a corporation, a deemed 351 exchange would occur and Form 926 would be required

Pre-Election Structure



Post-Election Structure



Means "flow-thru" for U.S. tax purposes

Active Trade or Business Exception

- Old Form 926 had a section for property qualifying for the active trade or business exception under section 367(a)(3)
- The active trade or business exception was repealed with TCJA of 2017
- Thus, the new draft form is modified to remove this category

Form 926 Reasonable Cause Exception

- If a taxpayer does not file Form 926
 - They later learn that they should have filed
 - They want to claim reasonable cause to avoid penalties
 - They must file the form as soon as they learn about the oversight
- Reasonable cause claims will be allowed only if “promptly after” becoming aware of the failure, an amended tax return is filed

Questions on Form 926?