

Reasonable Cause Regulations for Failure to File a Form 1120-F Within 18 Months of the Due Date for A Foreign Corporation

The 18-month filing deadlines may be waived if the foreign corporation establishes to the satisfaction of the Commissioner that the corporation, based on the facts and circumstances, acted reasonably and in good faith in failing to file a US income tax return (including a protective return).

For this purpose, a foreign corporation shall not be considered to have acted reasonably and in good faith if it knew it was required to file the return and chose not to do so. In addition, a foreign corporation shall not be granted a waiver unless it cooperates in the process of determining its income tax liability for the taxable year for which the return was not filed. The Commissioner shall consider the following factors in determining whether the foreign corporation, based on the facts and circumstances, acted reasonably and in good faith in failing to file a US income tax return:

- (A) Whether the corporation voluntarily identifies itself to the Internal Revenue Service (IRS) as having failed to file a US income tax return before the IRS discovers the failure to file;
- (B) Whether the corporation did not become aware of its ability to file a protective return (as described in paragraph (a)(3)(vi) of this section) by the deadline for filing a protective return;
- (C) Whether the corporation had not previously filed a US income tax return;
- (D) Whether the corporation failed to file a US income tax return because, after exercising reasonable diligence (taking into account its relevant experience and level of sophistication), the corporation was unaware of the necessity for filing the return;
- (E) Whether the corporation failed to file a US income tax return because of intervening events beyond its control; and
- (F) Whether other mitigating or exacerbating factors existed.