

## LB&I International Practice Service Process Unit – Audit

IPS Level	Number	Title	UIL Code	Number
Shelf	N/A	Crossover IPN	–	–
Volume	18	Foreign Currency	<b>Level 1 UIL</b>	9470
Part	18.2	Transactions in a foreign currency - §988	<b>Level 2 UIL</b>	9470.02
Chapter	18.2.1	Computation of exchange gain or loss - general	<b>Level 3 UIL</b>	9470.02-01
Sub-Chapter	N/A		–	–

<b>Unit Name</b>	How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses
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<b>Document Control Number (DCN)</b>	FCU/P/18_02_01-04
<b>Date of Last Update</b>	08/22/16

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# Process Overview

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Process Description

Under IRC 6707A and the regs under IRC 6011, if a taxpayer incurs or deducts a foreign currency loss under IRC 988 in excess of \$10,000,000 for corporations and partnerships (with only corporate partners) (\$50,000 for individuals and trusts), then it must complete and attach a copy of Form 8886 Reportable Transaction Disclosure Statement to the original or amended return. If the taxpayer does not file the Form 8886 there are penalties for failure to complete and attach the Form 8886. The amount of the penalty varies depending on the type of entity, the date when the assessment is being made, and whether it was reportable transaction or a listed transaction.

Rev. Proc. 2013-11 (modifying and superseding Rev. Proc. 2004-66) limits reporting of transactions for certain losses under Treas. Reg. 1.6011-4(b)(5). The IRC 988 loss must be ordinary (except for certain banks) and also excludes mark-to-market losses under Treas. Reg. 1.988-5(a)(6). If no reporting is required then there is no penalty for failure to file

If the taxpayer is required to file a copy of the Form 8886, then it must also send a copy to the Office of Tax Shelter Analysis (“OTSA”). The penalties for failure to file a copy of the Form 8886 with OTSA are the same as they are for not filing a disclosure with the taxpayer’s return.

The penalties are in addition to any other penalties imposed. The penalties may be determined through examination of taxpayer, preparer or promoter filings. The penalty will not be imposed until the taxpayer files a return and fails to provide the required disclosure statement or fails to file the Form 8886 with OTSA. There is no reasonable cause exception to this penalty. IRS Commissioner can rescind all or any portion of the penalty upon application by the taxpayer, but not for listed transactions. Rev. Proc. 2007-21 and Treas. Reg. 301.6707A-1(d) . There is no judicial appeal of Commissioner’s determination.

The assessment of penalties must be disclosed in any SEC filings the taxpayer is required to make.

IRM 4.32.4 contains all of the technical and processing information needed to develop and close a penalty case under IRC 6707A.

# Process Overview cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Example Circumstances Under Which Process Applies

While examining a corporate tax return, field personnel learn that there is a IRC 988 loss deducted on the return and the amount of the loss exceeds \$10,000,000. A Form 8886 Disclosure was not filed with the return. First, field personnel should ask the taxpayer to explain why a Form 8886 was not filed with the return. If the taxpayer does not provide an adequate explanation or exception for failing to file a Form 8886 Disclosure, or if the taxpayer provides a copy of a Form 8886 which is incomplete, then field personnel may begin the process of determining whether assessing penalties for failure to file Form 8886 Disclosing IRC 988 losses as discussed below is appropriate. Second, field personnel should determine whether a copy of the Form 8886 was filed with the Office of Tax Shelter Analysis ("OTSA"), if not, then field personnel should consider assessing penalties for failure to file Form 8886 Disclosing IRC 988 losses with OTSA.

# Determination of Process Applicability

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

Verify whether the taxpayer deducted a IRC 988 foreign currency loss in excess of the amounts which require disclosure.

Criteria	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>Determine whether a taxpayer deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure.</li> </ul>	<ul style="list-style-type: none"> <li>IRC 6707A</li> <li>Treas. Reg. 6707A-1</li> <li>Treas. Regs. 1.6011</li> </ul>	
<ul style="list-style-type: none"> <li>Ascertain whether the taxpayer filed a Form 8886 with the return and whether it was complete and accurate</li> </ul>	<ul style="list-style-type: none"> <li>IRM 4.32.4.1.3</li> <li>Penalties PN Website and Audit Tools</li> </ul>	
<ul style="list-style-type: none"> <li>Determine whether the taxpayer filed a copy of the Form 8886 with OTSA</li> </ul>	<ul style="list-style-type: none"> <li>Treas. Reg. 301.6707A-1(c) and Example 6</li> <li>IRM 4.32.4.3.2.1</li> </ul>	
<ul style="list-style-type: none"> <li>Obtain management approval to proceed with penalty case</li> </ul>	<ul style="list-style-type: none"> <li>IRM 4.32.4.4</li> </ul>	

# Determination of Process Applicability cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

Verify whether the taxpayer deducted a IRC 988 foreign currency loss in excess of the amounts which require disclosure.

Criteria	Resources	6103 Protected Resources
<ul style="list-style-type: none"> <li>▪ If penalties have been assessed, determine if any or all of the penalty should be rescinded (only available for non-listed transactions).</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.8(1) and (2)</li> <li>▪ IRC 6707A</li> <li>▪ Treas. Reg. 6707A-1</li> <li>▪ Treas. Regs. 1.6011</li> </ul>	
<ul style="list-style-type: none"> <li>▪ If penalties have been assessed, determine if any or all of the penalty should be rescinded (only available for non-listed transactions).</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.9</li> <li>▪ IRM 1.32.4.10</li> <li>▪ Rev. Proc. 2007-21</li> <li>▪ Treas. Reg. 301-6707A-1(d)</li> </ul>	

# Summary of Process Steps

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

<a href="#">Step 1</a>	Determine whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure.
<a href="#">Step 2</a>	Determine whether a taxpayer filed Form 8886 with the return and whether it was complete and accurate.
<a href="#">Step 3</a>	Determine whether the taxpayer filed a copy of the Form 8886 with OTSA.
<a href="#">Step 4</a>	If a Form 8886 Disclosure was not filed with the original return, was not filed with OTSA or the information contained on the Form 8886 Disclosure was inaccurate or incomplete, consider assessing penalties.

# Summary of Process Steps cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

<a href="#"><u>Step 5</u></a>	If penalties are going to be assessed, before proceeding, obtain necessary approval from immediate manager and Territory Manager to proceed with the penalty.
<a href="#"><u>Step 6</u></a>	Calculate the amount of the penalty based on the year of assessment, the type of taxpayer and the type of transaction not disclosed (reportable or listed).
<a href="#"><u>Step 7</u></a>	Prepare a Revenue Agent Report and issue to the taxpayer with a thirty-day letter.
<a href="#"><u>Step 8</u></a>	If the taxpayer agrees with the proposed penalty, obtain a signed Form 870 documenting taxpayer agreement.



# Summary of Process Steps cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

[Step 9](#) If penalties have been assessed, determine if all or any portion of the penalty being assessed should be abated.

[Step 10](#) If penalties have been assessed, determine if any or all of the penalty should be rescinded (only available for non-listed transactions).

# Step 1

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

**Step 1: Determine whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure.**

Determining whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure is based on facts and procedures set forth below.

Considerations	Resources	6103 Protected Resources
<p>Did the taxpayer deduct a IRC 988 foreign currency on its US return?</p> <ul style="list-style-type: none"> <li>▪ Review the taxpayer’s return and determine if any IRC 988 foreign currency losses were deducted. Other income and other deductions are common lines on the return where foreign currency losses will be included as deductions or netted against other foreign currency gains.</li> <li>▪ The amount of IRC 988 losses, which may not be netted or offset against any gains, is the determining factor in whether a Form 8886 disclosure may be required to be filed.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Issue an IDR asking whether any foreign currency losses were included on the return.</li> <li>▪ IRM 1.32.4</li> <li>▪ 1.6011-4(b)(5)(iii)(A)</li> <li>▪ Forms:               <ul style="list-style-type: none"> <li>– 1120, lines 11 and 26</li> <li>– 1120-S</li> <li>– 1065, pg. 1, lines 7 and 20                   <ul style="list-style-type: none"> <li>– Sch K, lines 11 and 13d</li> </ul> </li> <li>– 1040, line 21, Sch C, Sch E</li> <li>– 1041, lines 8 and 15a</li> </ul> </li> </ul>	
<ul style="list-style-type: none"> <li>▪ Determine whether the E&amp;P of a foreign entity owned by the taxpayer is reduced by more than \$10 million due to a IRC 988 loss.</li> </ul>	<ul style="list-style-type: none"> <li>▪ Foreign Information Forms:               <ul style="list-style-type: none"> <li>– 5471, Sch C, lines 8 and 16</li> <li>– 8865, Sch B, lines 7 and 20                   <ul style="list-style-type: none"> <li>– Sch K, lines 11 and 13d</li> </ul> </li> <li>– 8858, lines 4 and 6</li> <li>– 4520</li> </ul> </li> </ul>	

# Step 1 cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

**Step 1: Determine whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure.**

Determining whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure is based on facts and procedures set forth below.

Considerations	Resources	6103 Protected Resources
<p>Determine whether the loss was in excess of the amount which requires the filing of a Form 8886 Disclosure, (unless an exception applies, see Step 2):</p> <p>Loss amount exceeds:</p> <ul style="list-style-type: none"> <li>▪ \$10,000,000 for corporations and</li> <li>▪ partnerships (with only corporate partners)</li> <li>▪ \$2,000,000 for all other partnerships</li> <li>▪ \$50,000 for individuals and trusts</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 6707A</li> <li>▪ Treas. Reg. 1.6011-4(b)(5)</li> <li>▪ Form 8886 Reportable Transaction Disclosure Statement (2011)</li> </ul>	

# Step 1 cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

**Step 1: Determine whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure.**

Determining whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure is based on facts and procedures set forth below.

Considerations	Resources	6103 Protected Resources
<p>Determine whether any of the exceptions for disclosure of the 988 losses apply to the taxpayer or the transaction:</p> <ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.6011-4(b)(5): IRC 988 loss is not treated as ordinary (except for banks).</li> <li>▪ Rev. Proc. 2013-11, Sect. 4.03 provides that the following losses are not taken into account in determining whether a transaction is a loss transaction under Treas. Reg. 1.6011-4(b)(5):               <ol style="list-style-type: none"> <li>1. A loss from fire, storm, shipwreck, or other casualty, or from theft, as those terms are defined for purposes of IRC 165(c)(3);</li> <li>2. A loss from a compulsory or involuntary conversion as described in IRC 1231(a)(3)(A)(ii) and (a)(4)(B);</li> <li>3. A loss to which IRC 475(a) or IRC 1256(a) applies;</li> </ol> </li> </ul>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2004-66</li> <li>▪ Rev. Proc. 2013-11, IRC 4.02 and .03</li> </ul>	

# Step 1 cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

**Step 1: Determine whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure.**

Determining whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure is based on facts and procedures set forth below.


Considerations	Resources	6103 Protected Resources
<p>4. A loss arising from any mark-to-market treatment of an item under IRC 475(f), 1296(a), Treas. Regs. 1.446-4(e), 1.988-5(a)(6), or 1.1275-6(d)(2), and any loss from a sale or disposition of an item to which one of the foregoing provisions applied, provided that the taxpayer computes its loss by using a qualifying basis (as defined in IRM section 4.02(2) of this revenue procedure) or a basis resulting from previously marking the item to market, or computes its loss by making appropriate adjustments for previously determined mark-to-market gain or loss;</p> <p>5. A loss arising from a hedging transaction described in IRC 1221(b), if the taxpayer properly identifies the transaction as a hedging transaction, or from a mixed straddle account under Treas. Reg. 1.1092(b)-4T.</p>	<ul style="list-style-type: none"> <li>▪ Rev. Proc. 2004-66</li> <li>▪ Rev. Proc. 2013-11, Section 4.02 and .03</li> </ul>	

# Step 1 cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

**Step 1: Determine whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure.**

Determining whether a taxpayer has deducted a IRC 988 foreign currency loss in excess of the amount which requires the filing of a Form 8886 Disclosure is based on facts and procedures set forth below.


Considerations	Resources	6103 Protected Resources
 Examiners should consult with Counsel if the examiner believes that a disclosure requirement may apply.	▪ IRM 4.32.4.2.2(3)	

# Step 2

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 2: Determine whether a taxpayer filed Form 8886 with the return and whether it was complete and accurate.

Determining whether a taxpayer filed Form 8886 with the return and whether it was complete and accurate requires following the rules and procedures below.


Considerations	Resources	6103 Protected Resources
Review the taxpayer return and determine whether the taxpayer filed Form 8886 with the return and whether it was complete and accurate.	<ul style="list-style-type: none"> <li>▪ Treas. Reg. 1.6011-4(e)</li> <li>▪ Forms:               <ul style="list-style-type: none"> <li>– 1120</li> <li>– 1120-S</li> <li>– 1065</li> <li>– 1040</li> <li>– 1041</li> <li>– 5471</li> <li>– 8865</li> <li>– 8858</li> </ul> </li> </ul>	
If Form 8886 was not attached to the return and it is required, then issue an IDR to the taxpayer asking for the rationale or citations for non-filing.	<ul style="list-style-type: none"> <li>▪ Form 8886, Reportable Transaction Disclosure Statement (2011)</li> <li>▪ IRC 6707A</li> <li>▪ Treas. Reg. 301.6707A-1</li> </ul>	
 Examiners should consult with Counsel if the examiner believes that a disclosure requirement may apply and whether it was complete and accurate.	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.2.2(3)</li> </ul>	

# Step 3

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 3: Determine whether the taxpayer filed a copy of the Form 8886 with OTSA

Determining whether the taxpayer filed a copy of the Form 8886 with OTSA should be determined based on the facts and using the procedures below.

Considerations	Resources	6103 Protected Resources
<p>Examiners should contact OTSA at the beginning of an examination to determine whether a Form 8886 was filed with OTSA and the date and tax year of such filing. The examiner should be prepared to provide the taxpayer's name, TIN, year or years of interest, type of transaction and whether the transaction was incomplete or not attached to the return.</p>	<ul style="list-style-type: none"> <li>▪ OTSA Website Contacts</li> <li>▪ IRM 4.32.4.3.2.1(1)</li> <li>▪ Treas. Reg. 301.6707A-1(c) and Example 6</li> </ul>	
<p>If Form 8886 was not filed with OTSA as required, then issue an IDR to the taxpayer asking for the rationale or citations for non-filing.</p>	<ul style="list-style-type: none"> <li>▪ Form 8886, Reportable Transaction Disclosure Statement (2011)</li> <li>▪ IRC 6707A</li> <li>▪ Treas. Reg. 301.6707A-1</li> </ul>	
<p> Examiners should consult with Counsel if the examiner believes that a disclosure requirement may apply.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.2.2(3)</li> </ul>	



# Step 4

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 4: Consider assessing penalties.

Consider assessing penalties if a Form 8886 Disclosure was not filed with the original return, was not filed with OTSA or the information contained on the Form 8886 Disclosure was inaccurate or incomplete based on the facts and procedures below.


Considerations	Resources	6103 Protected Resources
<p>If a Form 8886 Disclosure was not filed with the original return, was not filed with OTSA or the information contained on the Form 8886 Disclosure was inaccurate or incomplete, consider assessing penalties.</p>	<ul style="list-style-type: none"> <li>▪ IRC 6707A</li> <li>▪ Reg. 301.6707A-1</li> <li>▪ 1.6011-4(b)(5)</li> </ul>	
<p>Consider any taxpayer responses to the IDR issued asking for the rationale or citations for non-filing regarding why the taxpayer either didn't attach a Form 8886, for any inaccuracies on the form or why the form was not filed with OTSA.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.3.2(1)</li> <li>▪ Treas. Reg. 6707A-1(d)</li> </ul>	
<p>Examiners must evaluate a taxpayer's participation in a reportable transaction within the meaning of the regulations. This determination will vary based upon which version of the regulations is in effect for the transaction, so the date of the transaction and the actual language of the regulations must be consulted.</p>	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.2.2(1)</li> <li>▪ Treas. Reg. 1.6011-4(c)(3)(i)(A) through (3)(i)(G)</li> </ul>	

# Step 4 cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 4: Consider assessing penalties.

Consider assessing penalties if a Form 8886 Disclosure was not filed with the original return, was not filed with OTSA or the information contained on the Form 8886 Disclosure was inaccurate or incomplete based on the facts and procedures below.


Considerations	Resources	6103 Protected Resources
 Examiners should consult with Counsel if the examiner believes that a disclosure requirement may apply.	▪ IRM 4.32.4.2.2(3)	

# Step 5

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 5: Obtain the necessary approvals on the appropriate form.

If penalties are going to be assessed, before proceeding, obtain necessary approval from immediate manager and Territory Manager to proceed with the penalty.

Considerations	Resources	6103 Protected Resources
 <p>The penalty must generally be approved at the Territory Manager level unless the Territory Manager or SB/SE Area Director (AD) or LB&amp;I Director of Field Operations (DFO), as applicable, requests AD or DFO approval. The examiner submits the file to his or her immediate supervisor for written approval of the imposition of the penalty.</p>	<ul style="list-style-type: none"><li>▪ IRM 4.32.4.4</li><li>▪ IRM Exhibit 4.32.4-4, <i>Case Overview and Record of Approval of IRC 6707A Penalty</i></li></ul>	

# Step 6

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 6: Calculate the amount of the penalty

Calculate the amount of the penalty based on the year of assessment, the type of taxpayer and the type of transaction not disclosed (reportable or listed) using the rules and procedures below.

Considerations	Resources	6103 Protected Resources
<p>Summary of Potential Penalties:             -----Assessment Date-----             Prior to 12/31/06</p> <p>Reportable Transactions:</p> <ul style="list-style-type: none"> <li>▪ Individuals           \$10,000</li> <li>▪ All other taxpayers   \$50,000</li> </ul> <p>Listed Transactions:</p> <ul style="list-style-type: none"> <li>▪ Individual             \$100,000</li> <li>▪ All other taxpayers   \$200,000</li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 6707A(b)</li> <li>▪ Treas. Reg. 301.6707A-1</li> <li>▪ Treas. Reg. 1.6011-4(b)</li> <li>▪ IRM 4.32.4.3.2.2</li> <li>▪ Penalties PN - IRC 6707A Toolkit</li> </ul>	

# Step 6 cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 6: Calculate the amount of the penalty

Calculate the amount of the penalty based on the year of assessment, the type of taxpayer and the type of transaction not disclosed (reportable or listed) using the rules and procedures below.

Considerations	Resources	6103 Protected Resources
<p>Summary of Potential Penalties (cont'd):</p> <p style="text-align: center;"> -----Assessment Date-----  12/31/06 and Forward</p> <p>Listed Transactions:</p> <ul style="list-style-type: none"> <li>▪ Individuals               <ul style="list-style-type: none"> <li>\$5,000 minimum</li> <li>75% of any tax</li> <li>Reduction reported/claimed</li> <li>\$100,000 maximum</li> </ul> </li> <li>▪ All other taxpayers               <ul style="list-style-type: none"> <li>\$10,000 minimum</li> <li>75% of any tax</li> <li>Reduction reported/claimed</li> <li>\$200,000 maximum</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 6707A(b)</li> <li>▪ Treas. Reg. 301.6707A-1</li> <li>▪ Treas. Reg. 1.6011-4(b)</li> <li>▪ IRM 4.32.4.3.2.2</li> <li>▪ Penalties PN - IRC 6707A Toolkit</li> </ul>	

# Step 6 cont'd

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 6: Calculate the amount of the penalty

Calculate the amount of the penalty based on the year of assessment, the type of taxpayer and the type of transaction not disclosed (reportable or listed) using the rules and procedures below.


Considerations	Resources	6103 Protected Resources
<p>Summary of Potential Penalties (cont'd):</p> <p style="text-align: center;"> -----Assessment Date-----  12/31/06 and Forward</p> <p>Reportable Transactions:</p> <ul style="list-style-type: none"> <li>▪ Individuals               <ul style="list-style-type: none"> <li>\$5,000 minimum</li> <li>75% of any tax</li> <li>Reduction reported/claimed</li> <li>\$10,000 maximum</li> </ul> </li> <li>▪ All other taxpayers               <ul style="list-style-type: none"> <li>\$10,000 minimum</li> <li>75% of any tax</li> <li>Reduction reported/claimed</li> <li>\$50,000 maximum</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>▪ IRC 6707A(b)</li> <li>▪ Treas. Reg. 301.6707A-1</li> <li>▪ Treas. Reg. 1.6011-4(b)</li> <li>▪ IRM 4.32.4.3.2.2</li> <li>▪ Penalties PN - IRC 6707A Toolkit</li> </ul>	

# Step 7

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 7: Prepare a Revenue Agent Report and issue to the taxpayer with a thirty-day letter.

Prepare a Revenue Agent Report and issue to the taxpayer with a thirty-day letter.

Considerations	Resources	6103 Protected Resources
 If it is determined that a penalty is appropriate and has been approved by management, then an RAR should be prepared and issued to the taxpayer with a 30-day letter.	<ul style="list-style-type: none"><li>▪ IRM 4.32.4.5</li><li>▪ Penalties PN Website</li></ul>	

# Step 8

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 8: Step 8: Secure a signed Form 870 documenting taxpayer agreement.

If the taxpayer agrees with the proposed penalty, obtain a signed Form 870 documenting taxpayer agreement.

Considerations	Resources	6103 Protected Resources
If the taxpayer agrees with the proposed penalty, obtain a signed Form 870 documenting taxpayer agreement.	▪ IRM 4.32.4.5.1	
If the taxpayer does not agree to the penalty assessment, then the examiner should follow the procedures set forth in the IRM.	▪ IRM 4.32.4.6	




# Step 9

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 9: Determine if all or any portion of the penalty being assessed should be abated.

If penalties have been assessed, determine if all or any portion of the penalty being assessed should be abated using the rules and procedures below.



Considerations	Resources	6103 Protected Resources
Exam can abate a penalty only if the penalty does not legally apply and was assessed in error.	▪ IRM 4.32.4.8(1)	
 If the examiner determines that an assessment must be abated in full or in part, the examiner must comply with all of the procedures set forth in the IRM including obtaining approval from the case manager.	▪ IRM 4.32.4.8(2)	

# Step 10

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

### Step 10: Determine if any or all of the penalty should be rescinded (only available for non-listed transactions).

If penalties have been assessed, determine if any or all of the penalty should be rescinded (only available for non-listed transactions).

Considerations	Resources	6103 Protected Resources
Determine if rescission of any penalty is appropriate. Consider any factors weighing in favor of rescission.	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.9</li> <li>▪ IRM 1.32.4.10</li> <li>▪ Rev. Proc. 2007-21</li> <li>▪ Treas. Reg. 301-6707A-1(d)</li> </ul>	
 Examiners should consult with Counsel if the examiner believes that a portion of an assessed penalty under 6707A should be rescinded.	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.2.2(3)</li> </ul>	
Currently, in order to request rescission, a taxpayer must have exhausted the administrative remedies available within the Office of Appeals regarding the proposed assessment of the penalty.	<ul style="list-style-type: none"> <li>▪ IRM 4.32.4.10(2)</li> </ul>	
 If rescission is determined to be appropriate, then the procedures in the IRM should be followed.	<ul style="list-style-type: none"> <li>▪ IRM 4.32.9</li> </ul>	

# Other Considerations / Impact to Audit

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

Considerations	Resources
<ul style="list-style-type: none"><li>▪ Whether the transaction was structured and not disclosed due to a Confidentiality Agreement signed with a promoter. If so whether the transaction is a listed transaction.</li></ul>	<ul style="list-style-type: none"><li>▪ OTSA Website</li></ul>

# Training and Additional Resources

## How to Assess Penalties for Failure to File Form 8886 Disclosing IRC 988 losses

Type of Resource	Description(s) and/or Instructions for Accessing	References
SABA sessions	Refer to Foreign Currency IPN SharePoint Site for a complete listing of Foreign Currency SABA sessions	<ul style="list-style-type: none"> <li>▪ INTL Foreign Currency Issues and IFRS plus Audit Techniques</li> <li>▪ IBC ONLY – Foreign Currency &amp; Int'l Matrix</li> <li>▪ IBC Common Errors in translating Foreign Currency</li> <li>▪ Building Blocks of Financial Products</li> <li>▪ IE Phase I, Module E – Lesson 1 Foreign Currency</li> <li>▪ IE Phase III, Module D – Interaction of International and Financial Products Issues</li> <li>▪ FP Phase I, Lesson 9 Foreign Currency</li> <li>▪ FP Phase III, Lesson 4 Foreign Currency</li> </ul>

# Training and Additional Resources cont'd

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Type of Resource	Description(s) and/or Instructions for Accessing	References
Reference Materials - Treatises	Other Reading Material	<ul style="list-style-type: none"><li>▪ Bittker &amp; Lokken: Fundamentals of International Taxation, Chapter 74 (Foreign Currency)</li><li>▪ BNA Tax Management Portfolio 921-2nd Tax Aspects of Foreign Currency</li><li>▪ Keyes: Federal Taxation of Financial Instruments and Transactions (Chapter 15, Foreign Currency Denominated Instruments)</li></ul>

# Glossary of Terms and Acronyms

Term/Acronym	Definition
AD	Assistant Director
DFO	Director of Field Operations
E&P	Earnings and Profits
IBC	International Business Compliance
INTL	International
IRC	Internal Revenue Code
IRM	Internal Revenue Manual
LB&I	Large Business and International
OTSA	Office of Tax Shelter Analysis
PN	Practice Network
SB/SE	Small Business/Self Employed

# Index of Related Issues

Issue	Associated UIL(s)	References
Foreign Currency Transactions Entered into by an Individual	▪ 9470.02	FCU/P/18_02_01-09
Disposition of a Portion of an Integrated Hedge	▪ 9470.02	FCU/T/18_02_03-01 (Formerly FCU/9470.02_03)
Disposition of Nonfunctional Currency	▪ 9470.02	FCU/T/18_02_01-08
Integration of Executory Contract and the Currency Hedge	▪ 9470.02	FCU/T/18_02_03-03
Legging into Integrated Treatment	▪ 9470.02	FCU/T/18_02_03-02
Legging out of Hedged Executory Contract	▪ 9470.02	FCU/T/18_02_03-04
Change in Functional Currency – How to Identify Issues	▪ 9470.03	FCU/P/18_03_02-03