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District Court Holds That FBAR Penalty Is Capped

The District Court of Colorado, in *U.S. v. Wadhan* (https://www.gpo.gov/fdsys/pkg/USCOURTS-cod-1_17-cv-01287/pdf/USCOURTS-cod-1_17-cv-01287-0.pdf), held that the IRS is not empowered to impose penalties in excess of \$100,000 per account for a taxpayer's failure to file or filing of inaccurate Report of Foreign Bank and Financial Accounts forms (FBAR). In *Wadhan*, the taxpayers failed to file FBAR forms for the 2008, 2009 and 2010 taxable years. For three of the violations (one in each year), the IRS assessed penalties against the taxpayers that exceeded the \$100,000 cap set in the regulations. The issue in the case was that the statute, 31 USC Section 5321(a)(5), was amended to provide for a penalty of the greater of \$100,000 or 50 percent of the value of the account that was not reported, whereas the relevant regulation provided for a cap of \$100,000 per violation prior to and after the statute's amendment. The IRS argued that the statutory language superseded the regulation's cap, but the court disagreed and found the IRS's argument unpersuasive since the regulation had been amended several times since the statute's amendment without altering the \$100,000 cap therein.

IRS Issues Final Regulations for Charitable Contributions

The IRS has issued final regulations (<https://www.federalregister.gov/documents/2018/07/30/2018-15734/substantiation-and-reporting-requirements-for-cash-and-non-cash-charitable-contribution-deductions>) on the substantiation and reporting for cash and non-cash charitable contributions made by individuals, partnerships and corporations; recordkeeping requirements for cash contributions; and definitions for "qualified appraisal" and "qualified appraiser."

IRS Issues Updated FAQs on FATCA Certifications

The IRS has updated the FAQs (<https://www.irs.gov/businesses/corporations/frequently-asked-questions-faqs-fatca-compliance-legal>) for the certifications required under the Foreign Account Tax Compliance Act (FATCA), which, in part, provide that the certifications for the period ending on Dec. 31, 2017 are due by Dec. 15, 2018.

ABA Seeks Guidance on Treatment of Losses Under Section 199A

The American Bar Association submitted comments (https://www.americanbar.org/content/dam/aba/administrative/taxation/policy/072318comments_authcheckdam.pdf) to the IRS requesting guidance on the treatment of qualified business losses, losses from publicly traded partnerships, certain other losses and other items under Section 199A. (Section references are to the Internal Revenue Code of 1986, as amended.)

Connecticut Issues Guidance on GILTI

Connecticut issued a special notice (<http://www.ct.gov/drs/lib/drs/publications/pubssn/2018/sn2018-7.pdf>) stating that it will treat global intangible low-taxed income (GILTI) as dividend income for Connecticut Corporation Business Tax purposes.

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