INTERNATIONAL

International Information Reporting for U.S. Individuals

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International information reporting is a complex topic. Severe civil penalties as well as potential criminal penalties may be assessed for non-compliance.
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As talent and investment capital become increasingly mobile, it is no longer uncommon for tax practitioners to see their individual clients living outside the United States for extended periods or holding foreign investments. U.S. citizens and residents are not only subject to tax in the United States on their worldwide income but also to extensive information reporting requirements in relation to their foreign assets. With the introduction of the Foreign Account Tax Compliance Act (FATCA), the IRS is gaining more transparency on U.S. persons' foreign financial assets and may assess penalties on U.S. individuals (i.e. U.S. citizens and residents) who fail to comply with their international information reporting (also referred to as “foreign reporting”) obligations.

This article summarizes the various international information reporting obligations for U.S. individuals and discusses the various options for individuals with delinquent international information returns to become compliant. The purpose of this article is to equip tax practitioners with a general understanding of what foreign reporting may apply to their U.S. individual clients and give them the ability to identify potential issues. This article does not discuss each reporting obligation in detail and does not contain detailed analysis of specific rules such as those pertaining to CFCs, PFICs and foreign trusts. Many of the international tax rules related to U.S. individuals are highly complex and require the expertise of an international corporate tax or private client advisor.

It is important to note that the filing requirements below are dependent on the U.S. classification of an entity, which may be different from the classification under the jurisdiction where the entity was organized or established. For example, a U.K. LLP

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(Limited Liability Partnership) is treated as a partnership for U.K. tax purposes but is treated as a

corporation for U.S. tax purposes unless a "check-the-box" election is made. Therefore, the potential U.S. filing requirements would be those pertaining to corporate entities.

INFORMATION REPORTING OBLIGATIONS FOR U.S. INDIVIDUALS OWNING INTERESTS IN FOREIGN ENTITIES

Information reporting is often required when U.S. individuals make direct or indirect investments in foreign entities. A foreign corporation or partnership is a corporation or partnership that is not organized under the laws of the United States or any State thereof unless, in the case of a partnership, the Secretary of the Treasury provides otherwise by regulations.[1]

Form 926 (Return by a U.S. Transferor of Property to a Foreign Corporation)

A U.S. individual is required to file Form 926 to report certain direct and indirect transfers of cash or property to a foreign corporation.[2] If an individual is a partner of a partnership that transferred property to a foreign corporation, the individual is treated as having transferred his/her proportionate share of the property.

Reportable transfers include those described in Section 6038B(a)(1)(A), 367(d), or 367(e): liquidation of a U.S. corporation into a foreign parent corporation; transfers to a controlled foreign subsidiary corporation; reorganizations in which stock in a U.S. corporation is exchanged for stock in a foreign corporation; and transfers made in connection with certain corporate reorganizations or spinoffs in which no gain or loss is recognized.

There are special rules relating to transfers of cash which provide that a Form 926 is required for such cash transfers only if (1) immediately after the transfer the individual holds directly or indirectly at least 10% of the total voting power or the total value of the foreign corporation or (2) the amount transferred by the person to the foreign corporation during the 12-month period ending on the date of the transfer exceeds $100,000.[3]

Form 926 is required to be attached to the U.S. individual's federal income tax return. A penalty equal to 10% of the fair market value of the property at the time of the transfer may be imposed for failure to timely file Form 926. The penalty will not apply if the failure is due to reasonable cause rather than willful neglect. The penalty is limited to $100,000 unless the failure was due to intentional disregard.[4]

Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations)

A U.S. individual owning an interest in a foreign corporation may be required to file Form 5471. There are multiple categories of filers and one or more categories may apply to the same individual in a particular year. Although Form 5471 is required for certain U.S. shareholders of "controlled foreign corporations" (CFCs), Form 5471 is also required for certain interests in foreign corporations that are not CFCs.

Form 5471 is required for the year in which a U.S. individual acquires a 10% or more ownership interest (in value or voting power) in a foreign corporation; acquires stock that, when added to existing stock, brings the individual's ownership interest to at least 10% in a foreign corporation (for example, from 8% to 10%); or begins the year with a 10% or larger ownership interest, disposes of stock during the year, and after the disposition he or she owns less than 10% of the corporation (for example, from 11% to 9%).

A foreign corporation is a CFC if more than 50% of its voting power or more than 50% of its value is owned by U.S. shareholders on any day during its tax year.[5] A "U.S. shareholder" for this purpose is a U.S. person who owns (directly, indirectly, or constructively) 10% or more of the total combined voting power of all classes of voting stock of a CFC or owns (either directly or indirectly) any stock of a CFC that is also a captive insurance company. Any 10% U.S. shareholder (direct, indirect, or constructive) of a CFC is required to file Form 5471 annually and is taxed currently on their pro rata share of the "Subpart F Income" earned by the CFC.

Attribution rules may apply to cause ownership of a foreign corporation by certain relatives to be imputed to the U.S. individual. In certain cases, one person may file Form 5471 and the applicable schedules on behalf of others who have the same filing requirements for the same corporation for the same period.

Form 5471 should be filed with the individual's federal income tax return. A minimum penalty of $10,000 per form may be imposed for failure to timely file Form 5471.[6]

Form 8865 (Return of U.S. Persons With Respect To Certain Foreign Partnerships)

Similar information reporting requirements apply to U.S. individuals owning interests in foreign partnerships.

Form 8865 also covers multiple categories of filers. This Form is required for the year in which a U.S. individual acquires a 10% or more direct interest (valued by capital, profits or deductions or losses) in a foreign partnership; acquires a direct interest and, as a result of the acquisition, owns a 10% or greater direct interest in the partnership; or begins the year with a 10% or larger ownership interest, disposes of stock during the year, and after the disposition, owns less than a 10% interest.

A U.S. individual is also required to file Form 8865 when he or she and any related persons contribute over $100,000 of property during any 12-month period ending on the date of transfer. Related persons for this

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purpose include members of the individual's family (including siblings (whether by whole or half-blood), spouse, ancestors, and lineal descendants); an individual and a corporation in which more than 50% in value of the outstanding stock is owned, directly or indirectly, by or for such individual; two corporations that belong to the same controlled group; a corporation or partnership in which the same persons own more than 50% of the value of outstanding stock or

more than 50% of the capital or profits interest, respectively; two S corporations if the same persons own more than 50% in value of the outstanding stock of both S corporations; and an S corporation and C corporation if the same persons own more than 50% in value of the outstanding stock of both.[7] There is no equivalent of Form 926 for transfers to foreign partnerships.

Any 10% owners of a controlled foreign partnership (CFP) (more than 50% of the partnership is controlled by U.S. persons)[8] are also required to file an annual Form 8865.

Form 8865 should be filed with the individual's federal income tax return. A minimum penalty of $10,000 per form may be imposed for failure to timely file Form 8865.[9]

Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund)

A Passive Foreign Investment Company (PFIC) is a foreign corporation where at least 75% of the corporation's gross income for its tax year is passive income or at least 50% of the average percentage of assets held by the foreign corporation during the tax year are assets that produce passive income or that are held for the production of passive income.[10] Passive income is typically defined as interest, dividends, royalties, rents, annuities, and excess gains over losses from the sale or exchange of property.[11] If a PFIC also meets the definition of a CFC (see above), the CFC rules override the PFIC rules.[12] In this case, Form 5471 is filed rather than Form 8621.

The PFIC determination is made on an annual basis. However, once a foreign corporation becomes a PFIC, it will generally always be considered a PFIC for U.S. federal tax purposes ("once a PFIC, always a PFIC").[13]

Once a corporation is determined to be a PFIC, the first U.S. person in the ownership chain is eligible to make one of several elections (if applicable) to report the income associated with the PFIC on a current basis. The most common PFIC elections include the Qualified Electing Fund (QEF) election and the Mark to Market (MTM) election.

The QEF election requires that the shareholder annually include his or her pro rata share of ordinary income and net capital gain of the PFIC in taxable income, regardless of whether distributions are made from the PFIC. In order to make a QEF election, the shareholder must receive an annual information statement from the PFIC indicating the amount of ordinary income and long-term capital gain required to be reported by the shareholder of the PFIC. If no such statement is received, the shareholder is not permitted to make a QEF election.[14]

If the PFIC does not provide the PFIC annual information statement, or the shareholder chooses not to make a QEF election, a U.S. shareholder may be able to make an MTM election if the PFIC stock is considered marketable as defined in Reg. 1.1296-2 (for example, if the PFIC is a non-U.S. mutual fund listed on the London Stock Exchange). Once an MTM election is made,

the U.S. shareholder is required to report any excess of the fair market value of the PFIC stock as of the end of the year over its adjusted basis as ordinary income; basis is adjusted each year to include income reported under the MTM method.[15] Losses from an MTM PFIC stock can be reported only to the extent equal to or less than prior years' income included under the MTM method.[16]

In the absence of an election, a U.S. shareholder of a PFIC is subject to the “1291 fund” rules upon receipt of a distribution from a PFIC. (A 1291 fund is a PFIC for which neither a QEF nor MTM election has been made).[17] An “excess distribution” is the portion of the distribution received from a 1291 fund in the current year that is greater than 125% of the average distributions received during the three preceding years (i.e., compare the current year distribution with the sum of the distributions from the PFIC received in the prior three years, divided by 3, and multiplied by 125%).[18] If there is no excess distribution, the entire current year distribution is treated as a non-qualified dividend.[19]

If there is an excess distribution, this amount is ratably allocated to each day of the shareholder's holding period. Portions allocated to the current year, and to any year before the foreign corporation qualified as a PFIC, are included on the shareholder's income tax return as ordinary income in the current year.[20] Portions allocated to prior PFIC years are taxed at the highest rate in effect for those years (without regard to the shareholder's actual tax rate), plus interest is charged on the tax.[21] The tax and interest relating to the prior year portions are added to the current year tax liability of the U.S. shareholder (i.e., the income related to these amounts is not reflected in adjusted gross income).

Generally, a U.S. individual that is a direct or indirect shareholder of a PFIC must file Form 8621 for each tax

year if he or she receives certain direct or indirect distributions from a PFIC, recognizes gain on a direct or indirect disposition of PFIC stock, or is making a QEF or MTM election with respect to the PFIC.

In addition to the above filing requirements, for years ending on or after 12/31/13, U.S. individuals are required to file Forms 8621 annually to report ownership of PFICs under Section 1298(f).

Form 8621 should be filed with the individual's federal income tax return. There is no specific penalty for failure to file Form 8621. However, if a PFIC required to be reported on Form 8938 (discussed below) is not so reported, a Form 8938 penalty may be imposed. In addition, the statute of limitations will remain open for the tax year for which Form 8621 was not included.[22]

Form 8858 (Information Return of U.S. Persons With Respect to Foreign

Disregarded Entities)

A foreign disregarded entity (FDE) is an entity that is not created or organized in the United States and that is disregarded as an entity separate from its owner for U.S. income tax purposes. A U.S. individual that is the tax owner of an FDE or owns a specified interest in an FDE indirectly or constructively through a CFC or a CFP is required to file Form 8858.

Form 8858 should be filed with the individual's federal income tax return. A minimum penalty of $10,000 per form may be imposed for failure to timely file Form 8858.[23]

If an FDE is owned via a CFC or CFP, Form 8858 may be included as an attachment to Forms 5471 or 8865, respectively, filed on behalf of others with the same filing requirements for the same period.[24]

Form 8832 (Entity Classification Election)

Although Form 8832 is not an international information reporting form, it is worth mentioning here because this Form is used to make an entity classification election for certain entities (commonly referred to as a "check-the-box" election) and therefore may change the related information reporting obligations for the U.S. individual owners of these entities.

For example, a foreign corporation may be eligible to make a "check-the-box" election to change its classification from a corporation to a partnership (if the corporation has more than one shareholder) or a disregarded entity (if the corporation has a sole owner).[25] If a check-the-box election is made, Forms 8865 or 8858 may be required beginning with the effective date of the election, rather than Forms 5471, 8621, or 926.

If a check-the-box election is made, a copy of Form 8832 should be attached to the individual's federal income tax return for the year in which the election becomes effective. A check-the-box election may result in gain recognition[26] and therefore proper advice should be obtained before any such election is made.

Information Reporting Obligations Related to Foreign Trusts

A trust is a domestic trust if a court within the United States is able to exercise primary supervision over the administration of the trust (court test) and one or more U.S. persons have the authority to control all substantial decisions of the trust (control test). A foreign trust is a trust that fails either the court test or the control test.[27]

Form 3520-A (Annual Information Return of Foreign Trust With a U.S. Owner)

In general, a U.S. individual who directly or indirectly transfers property to a foreign trust is treated as the owner of the portion of the trust attributable to such property if the trust has a U.S.

beneficiary in the year of the transfer.[28] A trust is treated as having a U.S. beneficiary for the year unless, under the terms of the trust, no part of the income or corpus of the trust may be paid or accumulated during the year to or for the benefit of a U.S. person, and if the trust were terminated at any time during the tax year, no part of the income or corpus of such trust could be paid to or for the benefit of a U.S. person. It is possible for a trust to be treated as having a U.S. beneficiary if an amount is paid to or accumulated for a CFC, a foreign partnership of which a U.S. person is a partner, or a foreign trust or estate that has a U.S. beneficiary.[29] A U.S. individual may also be treated as the owner of a foreign trust if he or she is the grantor of the trust under Sections 671-678.

A U.S. owner of a foreign trust is responsible for ensuring that the foreign trust files Form 3520-A and furnishing the required annual statements to its U.S. owners and U.S. beneficiaries.[30]

Form 3520-A is filed separately from the individual's income tax return and is due on March 15th following the (calendar) year end. Form 3520-A may be extended for six months by filing Form 7004. If Form 3520-A is not timely filed or the information furnished is incorrect or incomplete, the U.S. owner may be subject to a minimum penalty equal to the greater of $10,000 or 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person at the end of the year.

Form 3520 (Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts)

Form 3520 must be filed by a U.S. individual who is treated as the owner of a foreign trust, who makes a contribution to or receives a distribution from a foreign trust, engages in loan transactions with a foreign trust or receives certain gifts from a foreign individual, estate, corporation, or partnership.[31]

Form 3520 is filed separately from and is due on the same date as the individual's federal income tax return (including extensions). A penalty may be imposed if Form 3520 is not timely filed or if the information is incomplete or incorrect. The minimum penalty is equal to the greater of $10,000 or either (1) 35% of the gross value of any property transferred to or distributions received from a foreign trust for failure to report the transfer or the distribution, or (2) in the case of a U.S. individual treated as the owner of the trust, 5% of the gross value of the portion of the foreign trust's assets treated as owned by the U.S. individual.[32]

Reporting of Specified Foreign Financial Assets

U.S. individuals with an interest in “specified foreign financial assets” during the tax year must attach Form 8938 (Statement of Specified Foreign Financial Assets) to their U.S. income tax return if the total value of their specified financial assets exceeds the reporting threshold on either the last day of the tax year or at any time during the tax year.[33]

Specified foreign financial assets (SFFAs) include financial accounts maintained by a foreign financial institution. SFFAs also include foreign financial assets not held in an account, such as stock or securities issued by someone that is not a U.S. person, an interest in a foreign entity, and any financial instrument or contract that has an issuer or counterparty that is not a U.S. person (for example, a foreign insurance policy).[34]

Duplicative reporting may exist for certain assets, specifically for interests in certain foreign entities that are already reported on one of the following Forms: Form 8865, Form 8858, Form 926, or for an interest in a foreign trust or assets owned through a foreign trust that are reported on Form 3520. Although these assets must be included when determining if the reporting thresholds for Form 8938 are met, detailed reporting of these assets is not required on Form 8938 if the filer discloses (by checking applicable boxes on Form 8938) that one of these other Forms was filed to disclose the entity interest.[35]

The reporting thresholds for individuals living in the U.S. are much lower than those for individuals living overseas. For example, married taxpayers living in the U.S. who file a joint return are required to file Form 8938 if the total value of their specified foreign financial assets is more than $100,000 on the last day of the tax year or more than $150,000 at any time during the year.[36] Married taxpayers living outside the U.S. who file a joint return are required to file Form 8938 if the total value of their specified foreign financial assets is more than $400,000 on the last day of the tax year or more than $600,000 at any time during the year.[37]

Please note that for tax years beginning after 12/31/15, certain domestic corporations, partnerships, and trusts that are considered to have been "formed or availed of" for the purpose of holding, directly or indirectly, specified foreign financial assets must file Form 8938[38] if the total value of those assets exceeds $50,000 on the last day of the tax year or $75,000 at any time during the tax year.[39] U.S. individuals holding specified foreign financial assets through domestic entities therefore need to consider whether this new filing requirement applies to their domestic entities for tax year 2016.

A minimum $10,000 penalty may be imposed for failure to timely file a complete Form 8938.[40]

Report of Foreign Bank and Financial Accounts

A U.S. person with a financial interest in or signature authority over certain foreign financial accounts must file FinCEN Form 114, Report of Foreign Bank and Financial Accounts (FBAR) if the aggregate value of the foreign financial accounts exceeds $10,000 at any time during the calendar year.[41]

A U.S. individual is considered to have a financial interest in a foreign financial account for which he or she is the owner of record or holder of legal title, regardless of whether the account is maintained for his or her benefit or for the benefit of others.[42]

A U.S. individual is also considered to have a financial interest in an account owned by a

corporation in which he or she has more than a 50%

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direct or indirect ownership interest (by value or voting power), a partnership in which he or she owns directly or indirectly an interest in more than 50% of the partnership's profits or capital, or a trust of which he or she is the grantor or owner or has a greater than 50% present beneficial interest in the assets or income of the trust for the calendar year.[43]

Generally, a child is responsible for filing his or her own FBAR. If a child is unable to file his or her own FBAR for any reason, including age, the child's parent or guardian must file the FBAR for the child. The child's financial accounts may also need to be reported on a parent's or guardian's FBAR if the parent or guardian has signature authority over the child's accounts.

FBARs must be filed electronically separately from income tax returns. Some foreign financial accounts may need to be reported on both the FBAR and Form 8938, and the duplicative reporting rules described above for Form 8938 and certain other Forms do not apply for purposes of the FBAR. Beginning with FBARs filed for calendar year 2016, the due date is April 15th following the calendar year end. An automatic six-month extension is granted to filers failing to meet the April 15th deadline.[44]

A penalty of $10,000 per violation may be imposed for failure to properly file an FBAR. If the failure is considered willful, a penalty equal to the greater of $100,000 or 50% of the balance in the account at the time of the violation may be imposed.[45] Willful violations may also be subject to criminal penalties.[46]

Potential Pitfalls

U.S. individuals are required to report their worldwide income and to consider their worldwide assets for purposes of international information reporting. Worldwide income really means "worldwide!" Tax advisors should ask specific questions about any non-U.S. income or non-U.S. assets, as many individuals may not realize the breadth of required U.S. reporting, and such clients would likely not receive standard U.S. tax documents such as Forms 1099 or Schedules K-1 for their non-U.S. assets or income.

There are often many items to consider when clients are moving into or out of the United States. Entities or structures established before an individual becomes a U.S. resident are potentially reportable in the United States, including trusts and assets held through trusts. It is important for individuals to understand the citizenship or residency status of all family members, including minor children, and the related U.S. tax or reporting consequences as well as the potential U.S. tax implications of obtaining a green card or of giving up or not renewing a green card.

Not all tax-favored vehicles in non-U.S. jurisdictions are tax-favored in the United States. For example, a U.K. Stock and Shares Individuals Savings Account (ISA) may be very tax-efficient from a U.K. tax perspective. However because the investments held in the Stock and Shares ISAs are usually non-U.S. mutual funds that are very often PFICs, the complicated U.S.

information reporting and potential adverse U.S. tax effects may make it unattractive for U.S. individuals to open these types of accounts.

Tax preparers should be cognizant of the level of duplicative reporting required. For example, an interest in a single corporation may cause Form 5471, Form 8621, Form 926, Form 8938 and FinCEN Form 114 all to be required for the same investment. It is also important for tax return preparers to have a full understanding of their clients' organizational structures in order to advise their clients on proper reporting of all relevant entities and to properly apply “look through” rules as appropriate (such as in a tiered corporate structure).

BECOMING U.S. TAX COMPLIANT

There are several IRS programs that are designed to encourage delinquent taxpayers to become current with their U.S. filing requirements on a voluntarily basis. These programs are not amnesty programs and require that taxpayers pay substantial penalties. However, these penalties are often lower than what could be assessed if the IRS were to discover unreported assets or unreported income and apply all available penalties. In addition, these programs may provide protection from criminal penalties to accepted taxpayers.

The 2014 Offshore Voluntary Disclosure Program (OVDP)

The 2014 OVDP was introduced on 6/18/14 and is effective for all submissions made on or after 7/1/14. This is a continuation of the 2012 OVDP with modified terms. The program requires submission of eight years of tax returns and information returns and imposes penalties, including: 20% accuracy-related penalties on the full amount of underpayments of tax, failure-to-file and failure-to-pay penalties, and a 27.5% offshore penalty on the highest aggregate value of OVDP assets during the period covered by the OVDP (increased to 50% if the financial institution where the filer has assets is known to be under IRS or Department of Justice investigation), all of which must be paid at the time of submission.[47]

Pre-clearance is required for individuals to be accepted into the

program. Although it enables noncompliant individuals to resolve their tax liabilities, the OVDP is sometimes unattractive to taxpayers due to the hefty penalties.

Streamlined Filing Compliance Procedures

Individuals who failed to file international information returns or FBARs and have underpaid tax may use Streamlined Filing Compliance Procedures (“Streamlined Foreign Offshore Procedures” for non-U.S. residents or “Streamlined Domestic Offshore Procedures” for U.S. residents) to become compliant if they meet the eligibility criteria.

Individuals using the Streamlined Filing Compliance Procedures (domestic or foreign) are required to certify under penalties of perjury that their failure to report all income, pay all tax, and submit all required information returns, including FBARs, was due to non-willful conduct. If

the IRS has initiated a civil examination of the individual's returns for any tax year, regardless of whether the examination relates to undisclosed foreign financial assets, the individual will not be eligible to use the streamlined procedures.

If the individual meets the “non-residency” requirement, he or she may be eligible for the Streamlined Foreign Compliance Procedures. For U.S. citizens or green card holders, meeting the non-residency requirement means that in any one or more of the last three years for which the U.S. tax return due date has passed, the individual did not have a U.S. abode and was physically outside the United States for at least 330 full days. For individuals who are not U.S. citizens or green card holders, the non-residency requirement is met if they did not meet the substantial presence test of Section 7701(b)(3) and were non-resident aliens for U.S. tax purposes in any one or more of the last three years for which the U.S. tax return due date has passed.

Individuals submitting returns under the Streamlined Foreign Offshore Procedures are required to file three years of tax returns (or amended returns) together with any required information returns. In addition, individuals participating in Streamlined Foreign Offshore Procedures are required to submit six years of FBARs or amended FBARs. Tax and late payment interest need to be paid at the time of submission; however, penalties may be waived.

Individuals who fail to meet the non-residency requirement, have previously filed a U.S. tax return (if required) for each of the most recent three years for which the U.S. tax return due date has passed, have failed to report gross income from a foreign financial asset and pay tax and may have failed to file an FBAR and/or one or more international information returns with respect to the foreign financial asset, may be able to use Streamlined Domestic Offshore Procedures to become current with their tax filings.

Individuals using the Streamlined Domestic Offshore Procedures are required to file three years of tax returns (or amended returns) together with any required information returns. In addition, individuals participating in Streamlined Domestic Offshore Procedures are required to submit six years of FBARs or amended FBARs and are subject to an offshore penalty equal to 5% of the highest aggregate balance/value of the taxpayer's foreign financial assets during the years in the covered tax return period and the covered FBAR period in addition to tax and late payment interest.

Delinquent FBAR Submission Procedures

Individuals who have filed all of their tax returns and required international information returns and have no unreported income but who have not filed one or more required FBARs, are not under a civil examination or a criminal investigation by the IRS, and have not already been contacted by the IRS about the delinquent FBARs can file FBARs under the Delinquent FBAR Submission Procedures.

These individuals can file their delinquent FBARs electronically and include a statement explaining why the FBARs are filed late. The IRS will not impose a penalty for the failure to file the delinquent FBARs if the individual properly reported on his or her U.S. income tax returns, and paid all tax on, the income from the accounts.[48]

Delinquent International Information Return Submission Procedures

Individuals who do not need to use OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but who have not filed one or more required international information returns, have reasonable cause for not timely filing the information returns, are not under a civil examination or a criminal investigation by the IRS, and have not already been contacted by the IRS about the delinquent information returns can use these procedures to file their delinquent information returns.

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A reasonable cause statement must be attached to the returns in order to request a penalty abatement.

Recent Statistics on OVDP and Streamlined Filing Compliance Procedures

Data released by the IRS on 12/31/16 shows that 55,800 taxpayers have entered into OVDP to resolve their tax obligations, paying more than $9.9 billion in taxes, interest and penalties since 2009. Forty-eight thousand taxpayers have used the streamlined procedures and submitted more than 96,000 delinquent and amended income tax returns, paying approximately $450 million in taxes, interest and penalties.[49]

In support of the OVDP objective of allowing U.S. taxpayers to voluntarily address and resolve their failures to comply, the IRS Large Business and International Division has recently launched a variety of compliance campaigns to address corporate and individual examinations. The IRS has launched 13 campaigns as of the date of publication of this article, one of which is the OVDP Declines-Withdrawals Campaign. This campaign will be applicable to some non-compliant international private clients and specifically addresses those OVDP applicants who applied to receive pre-clearance into the OVDP program and were either denied participation in OVDP or who withdrew from the OVDP of their own volition.

POTENTIAL REVOCATION OF U.S. PASSPORTS FOR INDIVIDUALS WITH "SERIOUSLY DELINQUENT" TAX LIABILITIES

On 12/4/15, Fixing America's Surface Transportation Act was signed into law (P.L. 114-94). This Act contains a provision that allows the U.S. State Department to revoke existing passports or deny new passport applications beginning 1/1/16 for individuals with an outstanding U.S. tax debt that is considered "seriously delinquent." The definition of "seriously delinquent" includes any liability in excess of $50,000, including interest and penalties, for which the IRS has issued a notice of levy or lien for debt. It does not include debt that is being paid through an installment plan or that is currently under due process hearing. The $50,000 threshold will be indexed annually for inflation.

As a result of this legislation, it is increasingly important for U.S. individuals to stay current on their tax liabilities and to be aware of, and appropriately address, any IRS notices or

correspondence issued to them.

CONCLUSION

International information reporting is a complex area and there can be severe civil penalties as well as potential criminal penalties for non-compliance. It is important for tax practitioners to be aware of the various information reporting obligations their clients may face and to work with specialists in these areas as needed to help their clients pursue a clear understanding of their reporting obligations and remain in compliance.

[1] Sections 7701(a)(4) and (5).

[2] Reg. 1.6038B-1(b)(1)(i).

[3] Reg. 1.6038B-1(b)(3).

[4] Section 6038B(c)(3).

[5] Section 957(a).

[6] Section 6038(b).

[7] Reg. 1.6038B-2(i)(4).

[8] Reg. 1.6038-3.

[9] Section 6038(b).

[10] Section 1297(a).

[11] Section 1297(b).

[12] Section 1297(d).

[13] Section 1298(b)(1).

[14] Section 1295(a)(2).

[15] Reg. 1.1296-1(d).

[16] Reg. 1.1296-1(c)(3).

[17] Section 1291(d); Reg. 1.1291-1(b)(2)(v).

[18] Section 1291(b).

[19] Section 1(h)(11)(C)(iii).

[20] Section 1291(a).

[21] Section 1291(c).

[22] Section 6501(c)(8)(A).

[23] Section 6038(b).

[24] Internal Revenue Bulletin 2004-4.

[25] An eligible foreign corporation is a foreign corporation not designated as a "per se" corporation in Reg. 301.7701-2(b)(8).

[26] Reg. 301.7701-3(g).

[27] Reg. 301.7701-7(a).

[28] Section 679(a).

[29] Section 679(c).

[30] Section 6048(b).

[31] Sections 6048 and 6039F.

[32] Section 6677.

[33] Reg. 1.6038D-2.

[34] Reg. 1.6038D-3(b).

[35] Reg. 1.6038D-7.

[36] Reg. 1.6038D-2(a)(2).

[37] Reg. 1.6038D-2(a)(4).

[38] Reg. 1.6038D-6.

[39] Reg. 1.6038D-2(a)(1).

[40] Reg. 1.6038D-8.

[41] 31 C.F.R. section 1010.350(a).

[42] 31 C.F.R. 1010.350(e)(1).

[43] 31 C.F.R. 1010.350(e)(2).

[44] P.L. 114-41 section 2006(b)(11), 7/31/15; FinCEN, "New FBAR Due Date Announcement" (12/16/16), www.fincen.gov/news/news-releases/new-due-date-fbars-0.

[45] 31 U.S.C. section 5321(a)(5)31 U.S.C. section 5321(a)(5).

[46] 31 U.S.C. sections 5322(a)31 U.S.C. sections 5322(a) and (b).

[47] Offshore Voluntary Disclosure Program, "Frequently Asked Questions and Answers 2014," www.irs.gov/individuals/international-taxpayers/offshore-voluntary-disclosure-program-frequently-asked-questions-and-answers-2012-revised.

[48] IRS, "Delinquent FBAR Submission Procedures," www.irs.gov/individuals/international-taxpayers/delinquent-fbar-submission-procedures.

[49] IR-2016-137, "Offshore Voluntary Compliance Efforts Top $10 Billion; More Than 100,000 Taxpayers Come Back into Compliance" (10/21/16), www.irs.gov/uac/newsroom/offshore-voluntary-compliance-efforts-top-10-billion-more-than-100000-taxpayers-come-back-into-compliance.