



Are You in Compliance with International Asset Reporting Requirements?

by:

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If you are a U.S. taxpayer, you may be required to report your foreign-held assets to include bank accounts in offshore financial institutions. Failure to comply with such requirements can result in steep civil penalties, and in some case, criminal penalties or even jail time. However, there are voluntary disclosure options which may negate/reduce penalties. Please note that for the most egregious case, the Offshore Voluntary Disclosure Program (“OVDP”) was used most often. But the IRS will close this program on September 28, 2018. This leaves only the streamlined procedures and quiet filing which are also discussed herein.

Firm Background

The Law Office of Kevin F. Jursinski & Associates is a 35-year-old, AV-Preeminent Rated firm. Attorney Justin Mooney has a Master of Laws (LL.M.) in Taxation. In fact, Attorney Mooney spent the beginning of his career as a tax controversy attorney working with clients to resolve tax and reporting issues with the IRS and the Financial Crimes Enforcement Network (“FinCEN”). As you read this article, we hope that the points addressed will assist you in your particular situation.

Compliance

1. IRS Requirements

The IRS provides that “specified individuals” (essentially citizens, residents, and others who elect such treatment) are required to file an additional form along with their individual tax return. This is Form 8938, *Statement of Specified Foreign Financial Assets*. The asset value threshold is as follows:

Specified Individuals Living in the US	
Single Filers or Married Filing Separately	Married Filing Jointly
\$50,000 on the last day of the tax year	\$100,000 on the last day of the tax year
\$75,000 at any time during the tax year	\$150,000 at any time during the tax year

Specified Individuals Living Outside the US	
<u>Single Filers or Married Filing Separately</u>	<u>Married Filing Jointly</u>
\$200,000 on the last day of the tax year	\$400,000 on the last day of the tax year
\$300,000 on the last day of the tax year	\$600,000 on the last day of the tax year

In addition, certain domestic entities must file if they hold foreign assets worth \$50,000 at any time during the year.

2. FinCEN Requirements

The FinCEN filing threshold is fairly straightforward and applies to citizens, residents, trusts, estates, and domestic entities. If you have foreign bank accounts which equal or exceed \$10,000 at any point during the year, you must file a Foreign Bank Account Report (“FBAR”). The \$10,000 is computed from the aggregate of all foreign accounts. For example, two accounts with balances of \$7,000 each will require you to report both accounts.

Potential Penalties

If a taxpayer fails to file a Form 8938 along with their individual income tax return, the IRS may assess civil penalties between \$10,000 and \$60,000, in addition criminal penalties. Please note that the IRS may abate the penalties upon a showing of reasonable cause, which will be based on the facts and circumstances of each individual taxpayer.

For unfiled FBARs, civil penalties begin at \$500 per account per year, but are maximized at \$100,000 per account or 50% of the account balance. Further, criminal penalties may be applicable. Kindly note that there are mitigation guidelines provided based on the account value which can reduce the maximum penalties assessed.

Establishing Compliance

For unfiled Forms 8938, the IRS offers no specific amnesty program for coming into compliance. To receive favorable treatment, a taxpayer may voluntarily remit these unfiled forms and simultaneously ask for abatement of any related penalties.

Similarly, an individual with unfiled FBARs may also choose to move forward with a *quiet filing* where the outstanding forms are filed in accordance with the standard filing procedures. This route is most advantageous where there are minimal account balances and no hint of willful non-compliance on the part of the non-filer.

If there is concern over whether the IRS will assess FBAR penalties, there are voluntary disclosure programs that may be utilized to mitigate the assessments.

1. Streamlined Procedures

Under the streamlined procedures, the taxpayer is required to:

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- a. File amended or delinquent tax returns;
- b. If applicable, pay tax, penalties, and interest resulting from the newly filed tax returns;
- c. If applicable, pay the miscellaneous offshore penalty (equal to five percent of the highest aggregate value of the foreign accounts);
- d. File outstanding FBARs; and
- e. Certify that their conduct was not willful.

Currently, there are two distinct procedures that are in place: one for U.S. taxpayers residing in the U.S. and those that are non-residents. The primary difference between the two processes is non-residents are not required to pay the 5% penalty. Please note that these procedures are not available if the IRS has initiated a civil exam (or criminal investigation) of any of the taxpayer's open tax years.

2. Offshore Voluntary Disclosure Program

Where a taxpayer's conduct borders on the side of willfulness and there is concern of criminal liability, the Offshore Voluntary Disclosure Program ("OVDP") is most suitable. While a substantial penalty of up to 50% of your foreign assets may apply, you generally will be able to avoid criminal prosecution for the tax noncompliance and unfiled FBARs. Please note that the IRS will close the OVDP on September 28, 2018. To that end, if you are uncertain about whether OVDP is for you, contacting a tax professional should be a top priority.

Summary:

This is an overview of some of the issues facing persons with foreign assets and/or bank accounts. We are here to help. Please feel free to call or email us and we can provide further information:

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Disclaimer as to legal advice: This Article is not written for legal advice and is published for informational purposes only. The Article is intended to address observations as to certain elements currently in existence with International Asset Reporting Requirements. For specific information regarding your legal matter as it pertains to International Asset Reporting Requirements, please seek legal counsel.