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Approaching Deadlines for Offshore Account/Investment Reporting

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Note the approaching return filing obligations and deadlines imposed by the I.R.S. to combat offshore tax evasion on income derived from foreign bank and securities accounts and foreign trusts under the Foreign Account Tax Compliance Act (“FATCA”) and the Foreign Bank Accounts Report (“FBAR”) rules.

FATCA

- FATCA serves as a recently instituted information gathering tool used by the I.R.S. to identify any U.S. taxpayers who have not disclosed and reported earnings and activities on their offshore accounts and investments. FATCA not only requires filing and disclosure from the U.S. taxpayer, but also essentially imposes an obligation on foreign financial and investment institutions to report such foreign account activity directly to the I.R.S. (in a manner similar to the Form 1099 reporting of interest and dividends required of U.S. banks and financial institutions).
- U.S. taxpayers must attach to the Form 1040 tax return for 2014 a Form 8938 (Statement of Specified Foreign Financial Assets) by the usual April 15, 2015 deadline to report information regarding such assets if the total value of all such assets exceeds certain thresholds – i.e., a year-end value of \$50,000 (or \$75,000 at any point during 2014) for single taxpayers and married taxpayers filing separately; and a year-end value of \$100,000 (or \$150,000 at any point during 2014) for married couples filing jointly.
- Penalties for failure to comply with the FATCA filing requirements are severe – with civil penalties alone ranging from \$10,000 to \$60,000 for a violation. Further, a failure to file the Form 8938 along with the Form 1040 tax return precludes any running of the statute of limitations against I.R.S. enforced collection activity with respect to all items on the Form 1040 return – i.e., the failure can open up all items reported on the Form 1040 to unlimited I.R.S. audit and collection.

FBAR

- U.S. taxpayers with foreign accounts and investments with an aggregate value exceeding \$10,000 at any time during 2014 must not only acknowledge such accounts/investments on the Schedule B to their Form 1040 individual income tax return for 2014, but must also file a separate FBAR with the Treasury Department (whether or not such accounts/investments generated any taxable income). The FBAR for 2014 must be received (not just filed) by **June 30, 2015**.

- The June 30, 2015 FBAR filing must be made in electronic form on Form 114 (Report of Foreign Bank and Financial Accounts) developed by the Financial Crimes and Enforcement Network (“FINCEN”).
- Penalties for failure to comply with the FBAR requirements are also harsh – with civil penalties of up to \$10,000 per violation, and with criminal penalties of up to \$100,000 or, if greater, 50% of the value of the foreign investment.

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Filing the Form 8938 under FATCA does not relieve you of the requirement of filing the FBAR – and the filing of the FBAR does not relieve you of the requirement of filing the Form 8938. You may be required to file both, even if much of the information is duplicated in both filings.

Thus, by implementing both the FATCA and the FBAR filing and disclosure rules, the I.R.S. now has a check-and-doublecheck mechanism for tracking the income and activity of the offshore accounts and investments of U.S. taxpayers.

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