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Foreign Bank and Financial Accounts: What You Need to Know

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July 1, 2014 will mark a key stage of implementing the Foreign Account Tax Compliance Act, or FATCA, which Congress enacted in 2010 as a way to crack down on offshore tax cheats. For the last three years, individuals have been required to disclose more about their overseas holdings. But come this summer, foreign banks and other financial firms must start reporting to the Internal Revenue Service on their U.S. customers and most of their assets. As a result, these U.S. taxpayers – as well as their financial and tax advisers – will be under more pressure to report their assets.

If you have a financial interest in, or a signature or other authority over, foreign financial accounts you must file a Form 114 Report of Foreign Bank and Financial Accounts (Formerly Form TD F 90-22.1), or FBAR, if the aggregate value of the accounts exceeds \$10,000 at any time during the calendar year. A foreign financial account is a financial account located outside of the U.S. An account maintained with a branch of a U.S. bank that is physically located outside of the U.S. still qualifies as a foreign financial account. A financial account includes a securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution. A financial account also includes a commodity futures or options account, an insurance policy or annuity policy with a cash value, or shares in a mutual fund or similar pooled fund. In addition, a debit card account is a financial account, and a credit card account may be treated as a financial account under certain circumstances.

The FBAR is due by June 30 following the calendar year for which it applies. Thus, FBARs for the 2013 calendar year must be filed on or before June 30, 2014. Effective July 1, 2013, FBARs must be filed electronically using the E-Filing System maintained by the US Department of the Treasury's Financial Crimes Enforcement Network ("FinCEN"). This mandatory electronic filing requirement applies to all FBARs, and to amendments of previously filed FBARs, that are submitted by individuals or by entities on or after the effective date.

The penalties for failure to file a FBAR are significant. The civil penalties for a non-willful violation may not exceed \$10,000 per violation. Civil penalties for a willful violation may not exceed the greater of 100,000 or 50% of the amount in the account at the time of the violation. The criminal penalty for willful violations is a fine of not more than \$250,000, or imprisonment for not more than five years, or both. In addition, a taxpayer must file Form 8938 if they have an interest in one or more specified foreign financial assets having an aggregate fair market value (FMV)

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exceeding either \$50,000 on the last day of the tax year or \$75,000 at any time during the tax year (\$100,000 and \$150,000, respectively, for married individuals filing a joint annual return). For a taxpayer living outside of the U.S. who is a qualified individual under Code Sec. 911(d)(1), Form 8938 must be filed if the aggregate value of the specified foreign financial assets in which the taxpayer has an interest exceeds \$200,000 (\$400,000 if a joint return is filed) on the last day of the tax year or \$300,000 (\$600,000 if a joint return is filed) at any time during the tax year. An individual isn't required to file Form 8938 for any tax year for which he isn't required to file an annual return.

A taxpayer is a U.S. citizen, a U.S. resident alien for any part of the tax year, a nonresident alien who makes an election to be treated as a U.S. resident alien, and a nonresident alien who is a bona fide resident of Puerto Rico or American Samoa.

Specified foreign financial assets include financial accounts maintained by foreign financial institutions and other assets not held in accounts maintained by financial institutions, such as stock or securities issued by non-U.S. persons, financial instruments or contracts with issuers or counterparties that are non-U.S. persons, and interests in certain foreign entities. Where foreign real property is held directly, it will not be required to be reported under FATCA as a foreign investment. However, if foreign real property is held through a foreign entity, reporting of the entity would be required.

The penalty for failing to report specified foreign financial assets for a tax year is \$10,000. However, if this failure continues for more than 90 days after the day on which the IRS mails notice of the failure to the individual, additional penalties of \$10,000 are imposed for each 30-day period (or fraction of the 30-day period) during which the failure continues after the expiration of the 90-day period, with a maximum penalty of \$50,000.

If you have any questions on the filing requirements of the FBAR, please contact the qualified professionals of Zinner & Co. LLP.