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US TAX

IRS RAMPS UP AGGRESSIVE SEARCH FOR AMERICANS LIVING ABROAD - YOUR OBLIGATIONS AS A US PERSON

Under the US tax system, US persons - citizens, green card holders and residents are required to file annual US income tax returns reporting worldwide income.

It's your legal obligation to ensure that "true and accurate" returns are filed with the IRS in a timely way to avoid exposing yourself to the risks of numerous penalties and, potentially, criminal prosecution.

Are you compliant? Are your family members and friends aware?

Did you know that your American passport states that you must comply with US taxes under the "While in the foreign country" header? It's a little known fact; yet being unaware isn't a valid justification to the IRS.

Sharing this information with friends and family could help them avoid penalties. Encourage them to visit <http://individual.ustaxonline.com> for more information on submitting late or incorrect returns to the IRS.

Why should I file my tax return?

Filing your tax return is a responsibility you should not ignore. Failing to submit a tax return can have serious consequences, including a possible criminal investigation.

The IRS is increasingly likely to find non-compliant taxpayers, as it now receives information from other countries and whistle blowers regarding the activities of American persons abroad.

Further, from 2013, foreign banks will become increasingly likely to hand over data on its American clientele under new FATCA legislation.

With the objective of catching 90% of delinquent individuals this year, the IRS sends a strong message to the 6 million US taxpayers residing abroad who may not yet have complied with their US income tax obligations.

Taking advantage of the recently announced IRS amnesty, discussed in this document can make the difference between paying substantial penalties and facing prosecution.



WHO DOES THIS APPLY TO?

All US persons; Citizens, green card holders and residents are required to file annual income tax returns on worldwide income no matter where they live.

If you are unsure whether you qualify as a US person, the US Tax team can help you establish if you are liable for tax under the American tax system, as well as prepare returns that will satisfy IRS requirements.

Who is a US person?

- Born in the United States.
- US parents who have lived in the United States (this is a complex area as this is dependent on the number of years they spent there at certain ages, however US Tax can assist with this).
- Deemed US resident – there is a 183-day 3 year rolling average test.
- Holding a green card which has not voluntarily been rescinded or which has not been administratively revoked. The fact that the green card has expired or confiscated by immigration is not enough.

You do not need to hold a US passport to be deemed to be a US citizen!

What should I be filing?

- An annual tax return reporting your income from all worldwide sources.
- Informational reports detailing benefits in non-US corporations, trusts, partnerships and various other entities.
- US persons may also be required to file an annual report with the US Treasury detailing their ownership and/or signing authority in non-US financial accounts.
- State issues will also need to be considered.

How do I get up to date with my filings?

If you have not met your tax and filing obligations relating to your foreign accounts and assets, you are legally obliged to bring your filing obligations up to date, and the only question should be the manner in which you choose to do this. There are basically 3 ways of becoming compliant. These are:

- The Overseas Voluntary Disclosure Initiative (OVDI)
- Formal disclosure
- Informal disclosure



WHAT IS OVDI?

The 2011 OVDI is the latest in a number of efforts by the United States Government to encourage US persons who have not complied with their various US tax and related reporting requirements to become compliant.

The IRS has stated that the 2011 program is the non-compliant taxpayer's "last best chance" to come forward with an element of "certainty" on the amount they will owe to the US government. After this, the implications are that the IRS will use its full arsenal of penalties, and the possibility of criminal prosecution, to aggressively find and "punish" the non-compliant taxpayer.

What is required under OVDI?

- The taxpayer must file all delinquent or amended returns and additional reporting obligations for 2003 through 2010 calendar years.
- The taxpayer must pay all taxes, penalties and interest charges.
- The deadline for participation in OVDI is 31st August 2011. This may be extended by 90 days if a request is submitted by this date.

What are the benefits of OVDI?

Under OVDI, individuals accepted into the program can avoid criminal prosecution. Costs, penalties and interest charges are clear and the individual has the peace of mind that they are fully up to date and compliant.

While there are alternative disclosure procedures, OVDI may provide the best opportunity for the lower fixed penalties for becoming compliant.

Other ways of getting up to date with your taxes

Alternatively, those who do not wish to participate in the official IRS program may get up to date through two other options: Formal & informal disclosure.



WHAT ARE THE PENALTIES?

Under OVDI, one of the benefits is that the various penalties are clear cut and restricted unlike the other options.

For US persons living outside the United States, the non disclosure penalties are a maximum of 25%* and maybe reduced to 5% if all of the following conditions for all of the years of the voluntary disclosure are met:

- a). The taxpayer resides in a foreign country;
- b). The taxpayer has made a good faith showing that he or she has timely complied with all tax reporting and payment requirements in the country of residency including paying tax on the income from all offshore accounts; and
- c). The taxpayer has \$10,000 or less of US source income each year

If you qualify for the above, we highly recommend taking action now, before the 31st August deadline.

Failure to disclose income can also subject you to charges related to tax evasion and willfully failing to file tax returns, filing false returns or failing to file an FBAR.

We recommend seeking advice on the most appropriate way to report your worldwide income to avoid penalties and become fully compliant.

US Tax can offer you advice on becoming fully compliant within the strict timeline dictated by the IRS.

* Up to 25% of the highest aggregate balance in foreign bank accounts / entities or value of foreign assets.

Benefiting from OVDI reduced penalty

Mr. Smith is a US citizen who has lived and worked as a corporate executive in the United Kingdom since 1995. His income has included earnings in excess of \$250,000 in each year, as well as bank interest and investment income on financial accounts that had a high aggregate balance of \$1.2 million in 2009.

He has paid all required taxes on his earnings and investment income in the UK in every year, but has filed no US income tax returns since moving out of the United States. In addition to his financial accounts, the taxpayer has acquired a personal residence in the UK with an equity of \$900,000 and an automobile worth \$85,000, both financed with previously taxed savings from the U.S., as well as his salary and investment earnings in the UK.

Because the taxpayer was fully tax compliant in the UK, he will be eligible for a reduced offshore penalty of 5% of the value of the financial accounts, or \$60,000. The residence and automobile will not be included in the penalty base because the funds used to acquire them were fully taxed in the UK or the US.



Timeline for the Offshore Voluntary Disclosure Initiative

2009:

The IRS closed the Offshore Voluntary Disclosure Program in 2009, which encouraged US tax payers to come forward voluntarily and report previously undisclosed foreign accounts and assets.

2010:

Following the OVDP in 2009, the Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 as part of the US efforts to combat tax evasion by US persons holding investments in offshore accounts.

31st August 2011:

Due date for submission under OVDI to the IRS of your intention to file income tax returns and request for a 90 days extension or filing returns and paying tax with interest and penalties.

29th Nov 2011:

Extended deadline for submission of income tax returns, accompanying documentation and payment of amounts due by this date.

1st January 2013:

Foreign financial institutions will be required to report to the IRS on all US account holders according to the FATCA law.

Taking the first step

US Tax advisors can arrange a private consultation by phone to discuss your specific requirements, as well as apply for the 90 days extension on your behalf.

If, in the first instance you would like to review your situation with an attorney, US Tax can assist your attorney in determining your tax liability and the range of potential penalties you may be facing. If you do not have an attorney familiar with US tax laws we will be able to recommend an attorney to you.

Introducing US Tax & Financial Services Ltd

US Tax and Financial Services Ltd handles individual, partnership, corporate, trust and estate tax affairs for those subjected to the US and UK tax systems. Established more than 25 years ago, US Tax has offices in London, Zurich, Geneva and Tel Aviv.

Bringing with them experience from KPMG, Ernst & Young, PwC, Arthur Andersen and Deloitte covering a broad range of industries. The skilled team of advisors at US Tax offers tax advice, planning and compliance services.

Contact Helena Turner at US Tax. Email: tax@ustaxonline.com
Phone: +44 20 7357 8220 for more information, and remember to share this information with friends, family and colleagues who may benefit from it.

Related links:

- [About FATCA](http://www.irs.gov/businesses/corporations/article/0,,id=236664,00.html)
- [About OVDI](http://www.irs.gov/newsroom/article/0,,id=234900,00.html)
- [The IRS site for individuals](http://www.irs.gov/individuals/)
- [Dough Shulman, IRS Commissioner announces OVDI](http://www.irs.gov/newsroom/article/0,,id=235695,00.html)