

Life of an American abroad



US
TAX

& Financial Services

Dispelling Fear

- What are your fears?
 - Criminal implications
 - Cost of penalties
 - Cost of getting compliant with advisors
- Do not fear the consequences, get the facts:
- Each Individual is unique
- First steps to learning

An American's Reporting Responsibility



- **US CITIZENS**
 - Worldwide Tax - no matter where you live - from cradle to grave - forever
- **US RESIDENTS**
 - Worldwide Tax - as long as resident

Who – really – is a ‘US person’?

- Citizens
 - Born in US
 - Born outside US with one US citizen parent
 - Passport irrelevant
- Green Card holders
 - Whether expired or not
- Tax Residents
 - 183 day test
 - Three Year rolling average test



In your passport

Every generation has the obligation to free men's minds
for a look at new worlds . . . to look out from a higher
plateau than the last generation.

Ellison S. Onizuka

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A. RESTRICTIONS ON IMPORTATION OF GOODS AND SERVICES For information, write the Department of the Treasury, Office of Foreign Assets Control, Treasury Annex, 1500 Pennsylvania Avenue N.W., Washington, D.C. 20220, or consult <http://www.treas.gov/ofac>

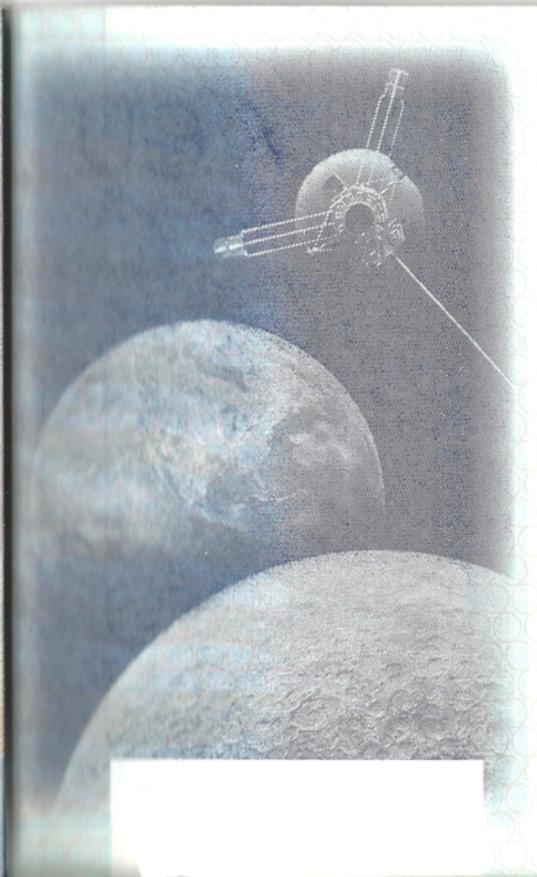
B. CUSTOMS & BORDER PROTECTION Contact Customs & Border Protection (CBP), for a copy of "Know Before You Go" and "Pets, Wildlife - Licensing and Health Requirements," at <http://www.cbp.gov/xp/cgov/travel/>

C. AGRICULTURE For a copy of "Travelers' Tips On Bringing Food, Plant, and Animal Products into the United States," contact the U.S. Department of Agriculture, <http://www.aphis.usda.gov/travel> See also U.S. Fish and Wildlife Service, <http://www.fws.gov/TipsforTravelers.htm> for other important "Information for International Travelers."

D. U.S. TAXES All U.S. citizens working and residing abroad are required to file and report on their worldwide income. Consult IRS Publication 54, "Tax Guide for U.S. Citizens and Resident Aliens Abroad," available at <http://irs.gov/publications/p54/index.html>

E. SOCIAL SECURITY Write to the Social Security Administration, Office of International Operations, P.O. Box 17769, Baltimore, MD 21235, or consult <http://www.ssa.gov/international> about receiving payments while outside the U.S., or contact the nearest Social Security office in the United States or at a U.S. embassy or consulate abroad.

EXACT WEBSITE ADDRESSES SUBJECT TO CHANGE.



What does an individual file?



- Income Tax Returns
 - Individual 1040 or 1040NR
- Information Returns
 - Passive Foreign Investment Company - Form 8621
 - Foreign Partnership Reporting - Form 8865
 - Foreign Disregarded Entity - Form 8858
 - Foreign Corporation Reporting - Form 5471/926
 - Foreign Trust Reporting - Form 3520-A/3520
 - Foreign Financial Asset Reporting - Form 8938
 - **Foreign Bank Account Report (FBAR) - Form TD F 90-22.1**

Expatriation – Who pays Exit Tax?



- Individual with net worth in excess of \$2,000,000 or
 - Failure to be tax compliant for last 5 years
- = Exit Tax
- Exit Tax
 - Deemed sale of all assets, calculate gain, exclude \$636,000, pay tax on the rest
 - Accelerate all deferred comp, pension plans, IRAs – entire amount taxes as if received
 - Exception for dual citizens at birth, living in the non US country, the \$2,000,000 net worth is non applicable, must meet 5 year tax compliance
 - File Form 8854 in year of expatriation with 1040

An American marrying a foreign national



- Transfers between spouses
 - Not Tax Free
 - Annual exclusion
 - \$139,000
 - Gifts in excess of annual exclusion subject to Gift Tax
 - \$5million Life-time exemption
 - May change in 2013

Joint Accounts

- Jointly held assets means telling the IRS about all of the assets held by the non-American
 - Non US husband's earnings deposited into joint account are not subject to US income tax by American spouse
 - 50% of dividends, interest, cap gains generated within the account is taxable generally to American spouse
 - Joint bank accounts – must report 100% on FBAR

Children and trusts for their benefit

- Children
 - Most likely US citizens
 - Taxpayers from birth, subject to US tax when investment income exceeds \$400 per year
 - Can be reported on parents US return
 - Potential FBAR reporting
- Trusts
 - Complex Income calculations
 - Complex reporting requirements
 - Substantial penalties



Investments



- Many Investments not “tax favored” by US tax system
 - Passive Foreign Investment Companies (PFIC)
 - Foreign registered mutual fund/ETFs/Funds/Insurance wrappers/unit trusts/bond wrappers
 - Gains taxed at highest rate over time period held plus interest
 - OR elect to pay income tax on the incremental growth each year
 - “Local” Tax Favored Investments
 - Benefits Clawed back by US system
- Informational Returns
 - Non-US
 - Companies
 - Partnerships
 - Trusts
 - Financial Accounts

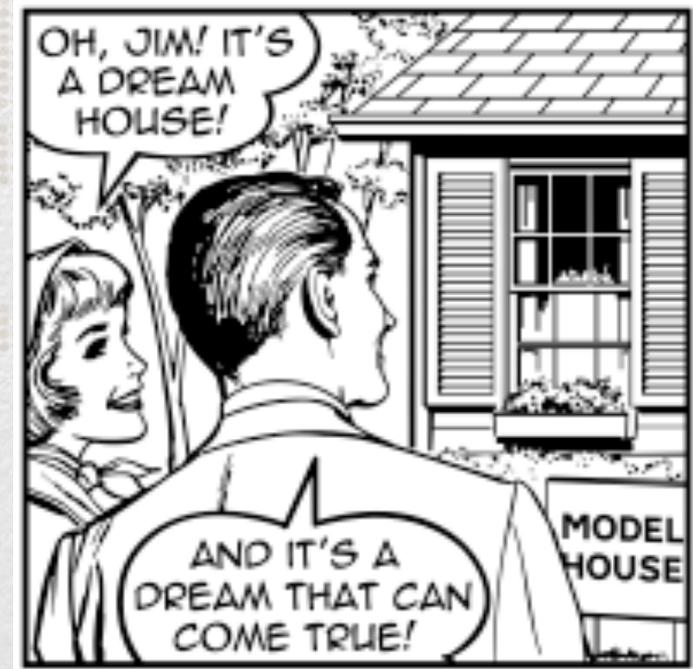
Passport or Green Card renewal abroad



- Information now automatically reported to IRS or there is a \$500 penalty
 - Name
 - Date of birth
 - Address outside of America (not just a PO Box)
 - Social Security Number
- Proposed legislation may prevent renewal for those who owe US tax of \$50,000 or more

Selling Your House

- Capital Gains subject to tax
 - Exclude \$250,000
 - Determine Gain based on
 - Dollar Purchase Price
 - Dollar Sales Price
 - Repayment of Foreign Currency Mortgage
 - FX Gain (in dollars) taxed
 - FX Loss (in dollars) non deductible personal loss
 - Definition of joint ownership?



Divorce

- Tax implications
 - Alimony
 - Taxable to recipient
 - Deductible by the person paying
 - Property Settlements
 - Treated as taxable sales
- Can think about re-drafting divorce decrees to make them more US tax friendly without any international tax problems

Retirement abroad

- Pensions - taxable ... check treaty
- US Social Security - may be excluded (treaty claim)



Gift & Estate Tax



- \$5million Life-Time exemption
 - May change in 2013
- Transfers to non US spouse
 - Annual gifts, \$139,000
 - At death, need QDOT (Qualified Domestic Trust)
- Lifetime transfers to non spouse
 - \$13,000 per year

Inheritance & Gifts Received



- From non-US person
- In excess of \$100,000
- Not Taxable, but
- Must file a report Form 3520, filing deadline same as filing Form 1040, June 15 or extended due date
- Penalty for failure to report is
 - \$10,000 or
 - 35% of amount received



NEW FOR 2012

New for 2012 – Form 8938

Where to Disclose? Form 8938 and/or FBAR? - 2011 Filings

Published January 19, 2012 by AICPA



	Fatca Form 8938^{1,3}	FBAR FORM TD F 90-22.1^{2,3}
	(Required by Title 26 - Internal Revenue Code)	(Required by Title 31 - Bank Secrecy Act)
Where and when to file?	Filed with Form 1040 (by April 15th, or extended due date) to IRS	Received by FinCEN (a separate agency under the Department of the Treasury) no later than June 30th
Who must file?	Individuals⁴	Individuals, estates, trusts, U.S. business entities
Minimum filing threshold	\$50,000-\$400,000⁵	\$10,000
Penalty for not filing	Civil: \$10,000; criminal penalties may also apply	Civil: Up to the greater of \$100,000 or 50% of account balance; criminal penalties may also apply.
Examples of types of financial accounts and assets to be disclosed:		
Financial accounts owned by the individual and maintained at a foreign financial institution, including deposit accounts and mutual funds	Yes	Yes
Financial accounts maintained at a foreign financial institution over which the individual has signature authority or control, but no financial interest	No	Yes
Foreign retirement account, such as a pension or IRA equivalent	Yes	Yes, if more than 50% interest
Direct ownership of stock in foreign corporation (not held in an account maintained by a financial institution)	Yes	No
Foreign partnership interest, such as offshore hedge fund or private equity funds	Yes	No
Interest in foreign trusts	Yes	No
Foreign-issued annuity contracts	Yes	Yes
Foreign-issued life insurance products with cash value	Yes	Yes
Interests in foreign financial assets, with joint ownership	Yes, and each joint owner must report separately	Yes, and each joint owner must report separately
Undeveloped land – direct interest, indirect interest	No/Yes	No
Real estate – direct interest, indirect interest	No/Yes	No
Personal property such as art, jewellery or car – direct interest, indirect interest	No/Yes	No
Gold and other precious metals – bullion, certificates, ETF	Yes	Yes
Reportable assets and accounts of a disregarded entity	Yes	Yes
Reportable assets and accounts of a foreign corporation, foreign partnership or foreign trust	Partly No⁶	Yes, if own more than 50% of the entity

¹ The data presented in this table is based on statutory language and final instructions to final Form 8938 for 2011, as well as temporary regulations currently in effect under Internal Revenue Code section 6038D.

² Form TD F 90-22.1 is required of U.S. persons who have ownership, signature authority (alone or in conjunction with another individual) to control the disposition of assets.

³ Accounts and assets in possessions and territories such as Puerto Rico and U.S. Virgin Islands are deemed foreign for purposes of Form 8938, but are not considered foreign for purposes of FBAR. However, if you live in the possession as a bona fide resident, the account there is not foreign.

⁴ For 2011, Form 8938 is only required to be filed by individuals. Per Prop. Reg. § 1.6038D-6, the reporting of specified foreign financial assets will also be required of specified domestic entities in future years.

⁵ The threshold applies to the aggregate value of all affected assets, as of December 31. It ranges from \$50,000 for a single taxpayer living in the U.S. to \$400,000 for couples filing jointly who live abroad. There are higher thresholds for intrayear asset values. Thus, even though aggregate account(s) may be below the filing threshold at year end (or even closed by year end), a high value in the account(s) at any point during the year could potentially require the filing of the Form 8938.

⁶ See Form 8938, Part IV for excepted assets. However, include net asset value of constructively owned reportable foreign assets and accounts of a foreign corporation, foreign partnership, a foreign trust, when determining filing threshold for Form 8938.

8938 (cont.)

- **Determining the Reporting Threshold That Applies to You**

The individual is required to file Form 8938 if he/she holds any specified foreign financial asset(s) with an aggregate value, either on the last day of the tax year or at any time during the year, exceeding the following thresholds:

Filing status	Value on the last day of the tax year is at least	Or, at any time during the tax year, the value is greater than
Unmarried Taxpayers or Married Taxpayers filing separately, and living in the United States	\$50,000	\$75,000
Married Taxpayers filing jointly living in the United States	\$100,000	\$150,000
Taxpayers not filing a joint return who are living abroad and otherwise qualify for the foreign earned income exclusion	\$200,000	\$300,000
Married Taxpayers filing jointly who are living abroad and otherwise qualify for the foreign earned income exclusion	\$400,000	\$600,000

- **Exceptions to filing** - <http://www.irs.gov/pub/irs-pdf/i8938.pdf>

The IRS is looking for revenue



- September 9, 2011 - OVDI closed
- January 2012 – new OVDP starts for Voluntary Disclosure
- January 1, 2014 - FATCA starts

Americans overseas



[Source: http://www.irs.gov/pub/irs-utl/1_09_tas_arc_vol_1_preface_toc_msp.pdf]

How is the IRS finding Americans abroad?

- Passport renewals
- Whistleblowers
- Treaty information exchange
- 2009 VDP, 2011 OVDI & 2012 OVDP
- FATCA
 - Disclosure from foreign banks
 - 11 Swiss banks under subpoena, 1 UK bank,
 - 1 India bank
- Increasing prosecution



Foreign Account Tax Compliance Act (FATCA)



- **Objective:**
 - Find US Taxpayers
- **Method:**
 - Make Foreign Entities Disclose US investors/account holders
- **How:**
 - 30% withholding tax on the bank's US transactions

Delinquent Filers Option



- Do nothing
- File on a “go forward” basis
- ‘Quiet filing’
- Voluntary disclosure with reasonable cause letter
 - Historic IRS Program
 - Potential reduced or eliminated penalties
 - 6 years returns, FBARs
- 2012 Voluntary Disclosure (OVDP)
 - 8 years returns, FBARs
 - Penalties up to 27.5% on highest value of your account
 - No criminal charges
 - 52 FAQs from IRS

Voluntary Disclosure – Americans Living Abroad



- IRS Fact Statement: FS-2011-13, December 2011
 - IRS is aware that not everyone has complied and are not criminals but are seeking to come into compliance
 - Due to reasonable cause, any and all **penalties** may be abated
 - Definition of reasonable cause, includes the following
 - Exercised ordinary business care and prudence in meeting your tax obligations, but nevertheless failed to do so
 - Compliance history
 - Circumstances beyond your control
 - Education
 - Previously been subjected to US tax
 - Recent changes in tax law that you could not be reasonably expected to know
 - Non compliance due to ignorance of the law

Choosing Tax Advisor – from IRS



- Be careful in selecting the tax professional who will prepare your return. Some basic tips and guidelines to assist taxpayers in choosing a reputable tax professional are:
 - Avoid return preparers who claim they can obtain larger refunds than other preparers.
 - Avoid preparers who base their fee on a percentage of the amount of the refund.
 - Use a reputable tax professional that signs and enters a preparer tax identification number (PTIN) on your tax return and provides you with a copy for your records.
 - Consider whether the individual or firm will be around to answer questions about the preparation of your tax return, months, even years, after the return has been filed.
 - Never sign a blank tax form.
 - Ask questions. Do you know anyone who has used the tax professional? Were they satisfied with the service they received?
- <http://www.irs.gov/compliance/enforcement/article/0,,id=106775,00.html>

Final words



- The IRS are targeting Americans overseas
- Stay compliant
- FATCA will disclose personal and financial details for most US persons with non-US assets directly to the IRS from 2014
- US Persons need to take advice on non US investments and structures
- Being non-US tax compliant with US tax laws from January 2014 could have serious consequences for US persons and their families

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