Life of an American abroad
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 plane than the last generation.

Elia Kazan

This document contains sensitive electronics. For best performance, do not bend, perforate or expose to extreme temperatures.

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/opl/400/travel/.

C. AGRICULTURE


D. U.S. TAXES


E. SOCIAL SECURITY

Write to the Social Security Administration, Office of International Operations, P.O. Box 17109, Baltimore, MD 21217, 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
  - $5 million 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
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

- **$5 million 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 – Form 8938
Where to Disclose? Form 8938 and/or FBAR? - 2011 Filings
Published January 19, 2012 by AICPA

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.

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.

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.

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.

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.

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.

| 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 |
| Direct ownership of stock in foreign corporation (not held in an account maintained by a financial institution) | Yes | Yes, if more than 50% interest |
| Foreign partnership Interest, such as offshore hedge fund or private equity funds | No | No |
| Interests in foreign trusts | Yes | No |
| 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 | Partially No | Yes, if own more than 50% of the entity |

1 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.
2 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.
3 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.
4 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.
5 See Form 8938, Part IV for exempted 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.
• 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:

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

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

7,000,000 Non Resident US Persons

Just 465,000 Filed US Tax Returns

[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?

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
Under applicable US regulations (Circular 230), we are required to inform you that, unless we specifically state otherwise, any tax advice in this communication (and in any attachments to it) was not intended or written to be used, and cannot be used, for the purpose of: (i) avoiding tax-related penalties; or (ii) promoting, marketing or recommending to another party any matter(s) addressed herein.