



Enforcement of US Tax Law for Accounts Outside the US

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As of June 2006, all US tax payers must disclose any financial interests they have in accounts outside the US. This article looks at what corporates can do to ensure that they comply with this regulation.

If you are a US taxpayer with a financial interest in an account outside the US, take note: new penalties and increased enforcement of regulation 31-CFR-103 may affect you personally. Mark your calendar for 30 June 2006, and review Schedule B of your 1040 tax return. It may save you severe fines or imprisonment.

As a US citizen, resident, corporation or ex-pat, Federal law mandates disclosure of your financial interest in any foreign account, and the failure to do so could result in civil and/or criminal penalties. Department of Treasury Regulation 31-CFR-103 created the requirement to 'report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries in which the aggregate balance exceeds \$10,000 in the prior year'. A financial account may be any checking, deposit, time deposit, securities, securities derivatives or other financial instruments accounts. So, even if you have check signing, wire transfer authority, or the ability to change signers or account information, this regulation applies to you. It also includes financial interest you may have in financial accounts at your place of employment (e.g. corporate bank accounts where you may be an authorized signer).

Background to Regulation

The regulation has its roots in The Bank Secrecy Act (BSA) of 1970, which authorizes the Secretary of the Treasury to require residents or citizens of the US to keep records and/or file reports concerning transactions with any foreign agency. Historically, compliance with this regulation has been minimal and enforcement has been lax. The Internal Revenue Service (IRS) has estimated that there may be as many as 1 million US taxpayers required to file a Foreign Bank Account Report (FBAR) in any given year. While difficult to estimate, they speculate that there may be less than 20 per cent compliance among corporates and individuals in this area.

Following enactment of the Patriot Act of 2001 and expiration of the Offshore Voluntary Compliance Initiative program (providing amnesty to qualifying FBAR non-filers), responsibility for compliance has been given to the IRS, and the IRS appears ready to crack down on non-compliance.

Legislation in 2004 provides for additional and harsher penalties for failure to comply with the reporting requirements. These new penalties eliminate the requirement that a violation be willful, and expand the applicability of these penalties to late filing.

More specifically, non-willful or erroneous reporting violations can result in penalties up to \$10,000 per account, and willful violations are subject to civil penalties equal to the greater of: (a) 50 per cent of the account balance at the time of the violation, or (b) \$100,000, but not less than \$25,000. In addition to these civil penalties, criminal penalties can amount to a fine of up to \$500,000 and imprisonment for up to 10 years.

To comply, individuals are required to report the maintenance of foreign financial accounts on Schedule B of their Form 1040 tax return, and also file form TDF 90-22.1 with the IRS on or before 30 June for the prior year.

Given the US Treasury's increased attention to FBAR filing and the addition of new penalties for failure to comply, individuals should become more diligent in reporting relationships with foreign financial institutions.

Employers beginning their filing process have the obligation to notify the appropriate employees of their requirement to file. The responsibility to execute the filing is that of the individuals. Completing the forms is

straight forward, but the biggest challenge for many companies' and employees' compliance is gathering all of the account and authority information.

How to Comply

If you believe this regulation applies to you, discuss the regulation with your tax department and determine whether it pertains to you and your company. Then work with your treasury department to determine which accounts apply to you. If your company is completing the forms, determine the date by which information must be received in order to complete the filing by the deadline. The following steps may help you, and your company, ensure that your filings are done thoroughly and on time:

- Review all bank relationships
- Produce a list of all foreign bank accounts
- Calculate the maximum aggregate balance in those accounts for the previous calendar year (e.g. 2005)
- For accounts exceeding the \$10,000 limit, produce a list of all individuals with financial interest along with residence and citizenship status
- Produce an audit list to compare with your bank
- Inform all affected individuals of their need to report on Schedule B of their 1040 return before the 15 April deadline
- Communicate the deadlines and specifics as to the individual vs. the company's liability for failure to comply
- Create a list of all foreign accounts on which each individual has authority
- Complete a form TD F 90-22.1 or a continuation form for each account identified (for the company and individual if filing on behalf of employees)
- File the form on or before 30 June (there is no allowance for late filing)
- Automate and standardize the process so things are easier next year

Since you have personal liability for misfiling, or lack of filing, it is important that you push to ensure your company is tracking and controlling the information in a way that ensures compliance and minimizes your chance of receiving a penalty.