

# US TAX INFORMATION REPORTING

Marla Waiss  
Canadian Tax Highlights  
September 2017

Attorneys

Marla Waiss

*Originally published in Canadian Tax Highlights, Volume 25, Number 9, September 2017. Reprinted with permission.*

Under US tax law, a US citizen living abroad must report worldwide income, including income from foreign assets, on an annual US income tax return. This filing requirement generally applies even if a taxpayer qualifies for tax benefits, such as the foreign earned-income exclusion or foreign tax credits, that may substantially reduce or eliminate the US tax liability; the benefits are available only if a return is filed. A US citizen living abroad may also have to make various US information filings if he or she owns certain kinds of foreign assets. These information reports must typically be filed at the same time that the US income tax return is due, and failure to file them in a timely fashion carries, in each case, a hefty penalty (such as \$10,000 per failure to file, for some forms). A special extended filing deadline applies to a US citizen or a resident alien who lives and works abroad: if the individual's tax home and abode are outside the United States and Puerto Rico, the income tax filing deadline is June 15 of the following year. Tax payments are still due on April 15, and interest applies to any payment received after that date.

Over the last several years, the IRS has focused on international tax compliance; in particular, it has paid special attention to FBAR ("Report of Foreign Bank and Financial Accounts," FinCEN form 114). As a result of these compliance efforts, FBAR filings have risen dramatically, and the IRS's other international compliance initiatives have raised awareness among taxpayers with offshore

## US TAX INFORMATION REPORTING

assets. The deadline for filing the annual FBAR is now the same as for a federal income tax return. This means that the FBAR must be electronically filed by April 15 of the following year; an automatic extension to October 15, 2017 was allowed for the 2016 taxable year. In the past, the FBAR deadline was June 30 of the following year, and no extensions were available.

Another common information return is form 5471, "Information Return of U.S. Persons with Respect to Certain Foreign Corporations." A US citizen who owns a controlling interest in a foreign corporation must annually file a form 5471, disclosing specific ownership information and financial information about the company. Similarly, a US citizen with certain kinds of interests in a foreign partnership may need to file form 8865, "Return of U.S. Persons with Respect to Certain Foreign Partnerships."

The Foreign Account Tax Compliance Act (FATCA) was enacted to address non-compliance by a US taxpayer with a foreign account, through a focus on reporting by US taxpayers and foreign financial institutions. FATCA introduced form 8938 ("Statement of Foreign Financial Assets"), which must be filed each year. Generally, a US citizen and a resident alien must report specified foreign financial assets on form 8938 if the aggregate value of those assets exceeds certain thresholds. The form 8938 filing requirement does not replace or otherwise affect a taxpayer's requirement to file an FBAR.

Other international information returns, such as form 3520 ("Annual Return To Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts"), may also arise for a US citizen living abroad. The IRS does offer some relief to individuals who have failed to file these information returns. For instance, a taxpayer who does not need to use the IRS Offshore Voluntary Disclosure Program or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax may be eligible for the Delinquent International Information Return Submission Procedures. To qualify for delinquent return procedures, the taxpayer must (1) not have filed one or more required international information returns, (2) have reasonable cause for not having filed in a timely fashion each delinquent information return, (3) not be under a civil examination or a criminal investigation by the IRS, and (4) not have already been contacted by the IRS about the delinquent information returns. In the reasonable-cause statement, taxpayers must certify that any entity for which the information returns are being filed was not engaged in tax evasion. The reasonable-cause standard is based on each taxpayer's particular circumstances, and it is imperative for the taxpayer to seek advice from counsel on whether reasonable cause exists with respect to the failure to file the form.

Because failure to file these information returns may result in significant penalties, a US citizen residing in Canada should pay careful attention to the information-reporting rules and seek guidance from an adviser on whether any IRS relief procedure is available.