

TAXPAYER ADVOCATE ASKS I.R.S. TO SIMPLIFY FOREIGN ASSET REPORTING

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Tags

F.B.A.R.
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National Taxpayer Advocate

On April 13, the Office of the National Taxpayer Advocate (“N.T.A.”) urged the Internal Revenue Service (“I.R.S.”) to reduce foreign asset reporting requirements magnified by the Foreign Account Tax Compliance Act (“F.A.T.C.A.”). The N.T.A. is an independent organization within the I.R.S. that aids taxpayers in resolving issues with the I.R.S. It identifies issues and suggests changes to the I.R.S. and Congress to aid both the I.R.S. and all taxpayers.

Currently, U.S. persons with foreign bank accounts file two reports relating to such accounts: one report for the I.R.S. and the other report for the Treasury Department. In a recommendation to the I.R.S., the N.T.A. said on April 13 that taxpayers shouldn’t have to report assets on Form 8938, *Statement of Foreign Financial Assets*, if those assets are already reported or reflected on a Financial Crimes Enforcement Network (“FinCEN”) Report 114, *Report of Foreign Bank and Financial Accounts* (“F.B.A.R.”).

Form 8938 has been expanded to reflect changes under F.A.T.C.A., which requires foreign financial institutions to report U.S.-owned accounts to the I.R.S. or face, in some cases, a 30% withholding tax on their U.S.-source income.

In addition, the N.T.A. urged the I.R.S. to reduce the burden on taxpayers with accounts abroad who are *bona fide* residents of the foreign countries in which they live, suggesting that it should not require banks organized under the laws of those countries to report such accounts under F.A.T.C.A.

DIFFERENCES AND SIMILARITIES AMONG THE FILINGS

F.B.A.R.’s

A U.S. taxpayer with a financial interest in or signature authority over a non-U.S. financial accounts with an aggregate value at any point during a calendar year in excess of \$10,000 must file F.B.A.R.’s. This filing is mandated by the Bank Secrecy Act and is not reported on the taxpayer’s tax return, although it is enforced by the I.R.S.

Determining whether a U.S. taxpayer is required to file F.B.A.R.’s, and the scope of information that must be reported, requires an analysis of the account records of each non-U.S. financial account in which the U.S. taxpayer has a financial interest or over which signature authority exists. The F.B.A.R. is required to be filed electronically by June 30 following the close of the reporting year.

Form 8938

A U.S. taxpayer who owns non-U.S. financial assets, including accounts with non-U.S. financial institutions, is required to file I.R.S. Form 8938, *Statement of Specified Foreign Financial Assets*, if the aggregate value of those assets exceeds certain thresholds.

The information that is reported on Form 8938 is similar to the information that is required to be reported on an F.B.A.R., although several differences exist. For example, in contrast to an F.B.A.R., Form 8938 does not require reporting of assets over which the taxpayer has signatory authority. In addition, Form 8938 is filed annually as part of the U.S. taxpayer's U.S. tax return, in comparison to the separate filing of the F.B.A.R.

CONCLUSION

The N.T.A. raises concerns about the duplicative and burdensome nature of the current foreign account reporting requirements and the problems imposed on American citizens living and attempting to bank abroad. However, it is not clear that the suggested solutions have a realistic opportunity of implementation.

At the level of interactions between expat Americans and foreign banks, horror stories abound of account closings that prevent expat Americans from having access to normal banking relationships. As a matter of policy, forcing banks to distinguish between Americans living in the U.S. and Americans living abroad seems to be an exercise in futility when a bank prefers to avoid American clients altogether in order to avoid penalties. At the level of Congressional mandate for reporting, the consolidation of the F.B.A.R. and Form 8938 will be difficult to achieve due to differences in the filing deadlines and information required to be reported, as well as different branches of the government that receive the forms.

A more practical solution would seem to be the inclusion of the F.B.A.R. in the U.S. income tax return, in addition to the separate filing on June 30. Alternatively, the entire Form 8938 reporting obligation may better be addressed by the next Congress, which will meet after the next Presidential election.

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