



News From Giordani, Swanger, Ripp & Phillips, LLP

Reminder - June 30, 2012 Deadline for 2011 FBARS

For Clients and Friends of GSRP, LLP

The due date for 2011 Treasury Department Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (an "FBAR"), is June 30, 2012. Unlike personal or business income tax returns, the due date of this report cannot be extended. Beginning with 2011 reports, individuals may be eligible to file their FBARS electronically.

Background

GSRP has reported previously on the importance of complying with the FBAR filing requirements. United States citizens, residents, and entities organized in the U.S. that have a financial interest in a foreign account must file the FBAR annually to disclose identifying information and the maximum value of each account owned during the year. Signatories on foreign accounts also must file an FBAR. Failure to comply can result in substantial civil and criminal penalties.

Who Must File?

U.S. citizens, residents, and entities (collectively, "U.S. persons") that have a financial interest in one or more foreign accounts must file the FBAR. While a financial interest obviously includes outright ownership of an account, a U.S. person also has a reportable financial interest in a foreign account owned by an entity when that person's ownership of the entity exceeds 50%.

Special rules deal with reporting requirements for accounts owned by trusts with U.S. connections. If a trust is a grantor trust for federal income tax purposes, the grantor of the trust has a financial interest in any foreign account owned by the trust. In addition, a U.S. trust beneficiary who has either a present beneficial interest in more than 50% of the trust assets or receives a distribution of more than 50% of the trust's current income has a financial interest in the trust's accounts. However, a trust beneficiary who receives distributions only at the discretion of the trustee does not have a financial interest in the trust's assets unless the beneficiary receives a distribution in the applicable reporting year. A remainder interest in a trust does not constitute a present beneficial interest in a trust.

An individual with mere signature authority over a foreign financial account also must file an annual FBAR, even if such individual has no financial interest in the account.

What Must be Reported?

Foreign accounts that must be reported on the FBAR include foreign bank accounts, brokerage accounts, and mutual funds; accounts holding non-cash assets, such as gold, also must be reported. A life insurance policy issued by a foreign carrier is reportable if the policy has a cash value.

Participants and beneficiaries of U.S. retirement plans (including IRAs) need not file an FBAR to disclose foreign financial accounts owned by the plan. Foreign hedge funds and similar investments currently are not reportable, but may be reportable in future years when the U.S. Treasury finalizes the portion of the regulations addressing the issue.

Additional Reporting May be Required – Form 8938

A new IRS disclosure requirement was introduced for 2011 and subsequent tax years. Each individual who has an interest in foreign accounts or assets, including ownership interests in foreign entities, must attach Form 8938 "Statement of Specified Foreign Financial Assets" to their income tax return if the aggregate fair market value of foreign assets exceeds either \$50,000 on the last day of the taxable year or \$75,000 at any time during the year. These filing thresholds double for married individuals filing joint income tax returns (\$100,000 on the last day of the year or \$150,000 during the year). Higher thresholds apply to individuals who reside outside the United States. Failure to comply with the filing requirements of Form 8938 carries its own penalty.

The information reportable on Form 8938 is certainly duplicative of information reportable on the FBAR, but the filing requirements for the respective forms are not identical, and should be carefully reviewed to ensure complete compliance.

GSRP Can Help

GSRP has extensive experience representing U.S. persons with foreign accounts and assets. Our Offshore Tax Compliance Group is ready to assist you or your clients in evaluating filing requirements related to offshore assets and accounts, and is also experienced in the preparation of any required forms and returns.

For further information regarding FBAR and foreign financial asset filing requirements, please contact:

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