



American Institute of CPAs
1455 Pennsylvania Avenue, NW
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August 15, 2016

The Honorable John A. Koskinen
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Mr. Robert Stack
Deputy Assistant Secretary
International Tax Affairs
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

The Honorable William J. Wilkins
Chief Counsel
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Ms. Danielle Rolfes
International Tax Counsel
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

RE: Simplification of Tax Filing Requirements for Americans Residing Abroad

Dear Messrs. Koskinen, Wilkins, and Stack and Ms. Rolfes:

The American Institute of CPAs (AICPA) recommends that the Internal Revenue Service (IRS) simplify the tax compliance process for Americans residing abroad through targeted elimination of certain duplicative reporting requirements.

Recommendations

The AICPA recommends that the Department of the Treasury (“Treasury”) and the IRS simplify the tax compliance process for certain Americans living abroad by relieving them of the requirement to file the following forms related to specified foreign financial accounts:

- FinCEN Form 114, *Report of Foreign Bank and Financial Accounts* (commonly known as “FBAR”)
- Form 8938, *Statement of Specified Foreign Financial Assets*
- Forms 3520/3520A, *Annual Return To Report Transactions With Foreign Trusts, and Receipt of Certain Foreign Gifts and Annual Information Return of Foreign Trust With a U.S. Owner*

In order to provide a safeguard against the potential for tax evasion, we recommend that all of the following conditions are met in order to qualify for relief from the filing requirements:

- The specified foreign financial account is maintained in a financial institution located in the taxpayer’s country of foreign residence.

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- The foreign financial institution in which a specified foreign financial account is held is in compliance with the Foreign Account Tax Compliance Act (FATCA) or the relevant Intergovernmental Agreements (IGA).
- The taxpayer provides the foreign financial institution in which a specified foreign financial account is held, with an accurately completed Form W-9, *Request for Taxpayer Identification Number and Certification*, or an appropriate equivalent (certain United States residents abroad are treated as non-resident aliens, and file Form W-8BEN, *Certificate of Foreign Status of Beneficial Owner for United States Tax Withholding and Reporting (Individuals)*).
- The taxpayer properly reports all taxable income derived from the specified foreign financial account on their United States (U.S.) income tax return.
- The taxpayer timely files a new simplified information disclosure form for the foreign financial account when the account is first established. A transition rule covering pre-existing accounts would apply.

Background and Analysis

American citizens and residents (typically “green-card” holders) living in foreign countries face a significant tax and financial regulatory compliance burden. Generally, Americans living abroad maintain local checking accounts, savings accounts, brokerage accounts and retirement accounts in their countries of residence. These accounts are not maintained to evade U.S. taxes — they are maintained to accommodate common financial activities.

Americans living abroad are required to file a multitude of complex U.S. information reporting forms, including FinCEN Form 114, Form 8938, and Forms 3520/3520A, which are addressed in this proposal. These taxpayers are also subject to a number of other foreign reporting forms (e.g., Form 5471, *Information Return of U.S. Persons With Respect to Certain Foreign Corporations* and Form 8858, *Information Return of U.S. Persons With Respect to Foreign Disregarded Entities*) which we do not address in this proposal.

Although the IRS has conducted substantial outreach in recent years in order to educate Americans living abroad of their obligation to file the information returns, many Americans remain unaware of their filing requirements. Also, Americans living abroad who are aware of their filing obligations often lack the expertise to properly complete the forms and typically must seek professional assistance at a significant financial cost.

Each information return requires substantial time to prepare and file. For example, the official time estimate for the average filer to prepare an FBAR is 20 minutes,¹ however, it is the experience

¹ [FinCen 114 - Online Form.](#)

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of our members that the actual time to complete the FBAR is typically between one and two hours. In addition, the official time estimate to prepare Form 8938 is approximately 2 ½ hours.² Finally, the official time estimate to prepare Form 3520 exceeds 54 hours;³ for Form 3520-A the estimate exceeds 43 hours.⁴

The AICPA believes that the passage and implementation of FATCA together with the relevant IGAs, has rendered a portion of the compliance burden for Americans residing abroad duplicative and unnecessary. Since the advent of FATCA and IGAs, the information necessary to combat tax evasion and discover abusive actions by taxpayers holding these accounts is already received by the IRS. The reporting required by taxpayers is duplicative and imposes an unnecessarily harsh burden in terms of time, effort and expense with no significant benefit to Treasury or the IRS.

The civil penalty for failure to file the forms, or to include an account on the FBAR, is ordinarily \$10,000, an unusually high penalty where the failure to file is inadvertent and not part of an effort to avoid tax filing or payment obligations.

Our recommendation for relief from existing filing requirements would only apply to taxpayers who have foreign financial accounts in their country of residence. These taxpayers have established the accounts as part of their day-to-day living, with no intent to hide assets or knowingly avoid their income tax liabilities. We believe it is unfair to subject these taxpayers to a complicated, time-consuming, and potentially expensive reporting requirement for information available to the IRS from alternative sources. The potential imposition of onerous penalties for inadvertent and unintentional compliance failures exacerbates the unfairly punitive nature of the reporting requirements. It is possible to obtain an abatement of penalties through a voluntary disclosure program or reasonable cause exception, however, the time and cost to endure the process is often excessive.

We believe that our recommendations do not require legislative action. Treasury has previously used their regulatory authority to reduce the number of information returns that Americans are required to prepare and file as shown in the following table.

² [Form 8938 Instructions](#).

³ [Form 3520 Instructions](#).

⁴ [Form 3520 - A Instructions](#).

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| Form | Treasury Authority Previously Utilized |
|-------------|---|
| FBAR | Exemption from filing for certain employees/officers with signature authority only [FinCEN Notices 2011-1 through 2015-1] |
| 8938 | Threshold for filing for Americans abroad raised from \$50,000 [Treas. Reg. § 1.6038D-2(a) ⁵] |
| 3520/3520A | Canadian Registered Retirement Savings Plans and Canadian Registered Retirement Income Funds [IRS Notice 2003-75] |

The AICPA is the world's largest member association representing the accounting profession, with more than 412,000 members in 144 countries and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

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We appreciate your consideration of our comments and welcome the opportunity to discuss these issues further. Please feel free to contact me at (801) 523-1051 or tlewis@sisna.com; Blake Vickers, Chair, AICPA International Taxation Technical Resource Panel, at (713) 753-5493 or blake.vickers@kbr.com; or Jonathan Horn, Senior Technical Manager – AICPA Tax Policy & Advocacy, at (202) 434-9204 or jhorn@aicpa.org.

Respectfully submitted,



Troy K. Lewis, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Mr. Douglas Poms, Deputy International Tax Counsel, Department of the Treasury
Ms. Brenda Zent, Special Advisor, Office of International Tax Counsel, Department of the Treasury
Mr. Douglas W. O'Donnell, Commissioner, Large Business and International, Internal Revenue Service
Mr. Theodore Setzer, Assistant Deputy Commissioner (International), Large Business and International, Internal Revenue Service
Ms. Jennifer Shanksy Calvery, Director, Financial Crimes Enforcement Network

⁵ All section references in this letter are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.