US Voluntary Disclosure

what you need to know, and how we can help

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Introduction

Countries throughout the world have committed to redefining banking secrecy laws so as to no longer protect any form of tax offense and/or adopt more stringent information sharing standards in tax matters. The shift to greater transparency and information sharing has caused an increase in the number of individuals seeking to divulge previously unreported income. Several jurisdictions now offer various streamlined measures or amnesty programs for such taxpayers in an effort to get individuals back into the tax net.

The United States has long had a 'voluntary disclosure' program, but has recently announced new rules for individuals with offshore investments wishing to 'come clean'.

In the current climate of increased information exchange under the Foreign Account Tax Compliance Act, Congressional Investigations, IRS lawsuits against international financial institutions and Justice Department investigations of individuals and foreign banks, an ever-increasing number of US taxpayers have expressed an interest in reviewing their tax and information reporting obligations. Likewise, many financial advisers and fiduciaries are reviewing their internal procedures in light of current 'best practice' in servicing their US clients.

On June 18, 2014, the IRS announced a new 'offshore' voluntary disclosure initiative (the '2014 OVDI') aimed at non-compliant US taxpayers with unreported offshore (i.e., non-US) bank accounts and assets. The initiative became effective July 1, 2014 and is a modified version of the programs offered in 2009, 2011, and 2012. The 2014 OVDI gives taxpayers with unreported offshore accounts a chance to come clean while mitigating the risk of criminal prosecution. Non-compliant taxpayers who fail to come forward before being discovered, or before the IRS ends the 2014 OVDI program, will face 'more dire' consequences, including higher civil penalties and the possibility of criminal prosecution.

What do you need to know now?

The 2014 OVDI borrows heavily from previous disclosure programs, with several significant changes:

- The time period remains at eight years. Taxpayers filing after the due date for the 2013 tax return will now be required to pay back taxes, interest and accuracy or delinquency penalties for tax years 2006 to 2013

- Taxpayers must pay an upfront penalty of 27.5% of the highest total asset value in all unreported foreign financial accounts and entities. The entire value of a foreign business that produces unreported income will potentially be included for purposes of determining the 27.5% penalty along with other assets such as real estate, artwork and commodities if acquired with unreported income. Previously, the penalty applicable to participants of the 2012 OVDI was due at the end of the program after the IRS issued a closing agreement to the taxpayer

- Taxpayers holding accounts with foreign financial institutions or facilitators that have been publicly identified as being under investigation or as cooperating with a government investigation, prior to filing their preclearance letter, will face a 50% penalty of the highest total asset value in all unreported foreign financial accounts and entities

- Under the 2012 OVDI, the IRS expanded the group of individuals who may qualify for reduced penalty rates. These options are no longer available under the 2014 OVDI due to the expansion of the Streamlined Filing Compliance Procedure (the 'Streamlined Procedure')

- The Streamlined Procedure originally announced on September 1, 2012 has been modified to allow a broader group of individuals with US tax obligations to become compliant. The program was originally only available to certain ‘low risk’ taxpayers who could become compliant by filing three years of back income tax returns and six years of back FBARs. The taxpayer had to pay taxes, penalties and interest but no additional penalty was imposed. In the absence of high risk factors, a taxpayer was deemed to be low risk and therefore eligible to participate in the Streamlined Procedure if he or she was a non-US resident and his or her US income tax returns showed less than $1,500 of income tax due for each year. However, the 2014 Streamlined Procedure eliminates the non-US residency requirement, risk assessment and the $1,500 income tax threshold. Now, taxpayers whose failure to file was the result of ‘non-willful’ conduct may be eligible to participate in the 2014 Streamlined Procedure. Taxpayers must provide a written statement, signed under the penalty of perjury, certifying that their failure to file was due to non-willful conduct. Non-willful conduct is conduct that is the result of negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law. No additional penalty is imposed against a non-US resident taxpayer who becomes compliant under the Streamlined Procedure, however, US residents are subject to a 5% penalty on the highest aggregate balance/value of foreign financial assets during the covered tax return period and FBAR period

- The IRS has recently issued specific guidance on the 2014 OVDI. Taxpayers are advised to follow the new 2014 guidelines rather than the prior 2012 OVDI guidelines.

The US Voluntary Disclosure time line – what went before and where we are now?

On March 23, 2009, the IRS announced guidance for individuals with untaxed offshore assets looking to ‘get right with their government’. Although not technically an amnesty, the program set out a standardized set of tax and penalty regimes providing for fixed consequences. The guidance was only valid until October 15, 2009, and although taxpayers had penalties to pay, the program was intended to be considerably less harsh than if the IRS pursued all possible penalties. By coming forward voluntarily, taxpayers could cap their liabilities at six years of back taxes, interest and standardized penalties and thus mitigate the risk of criminal prosecution.

During 2009, 2010 and as recently as February 23, 2011, the IRS amended the rules relating to the scope of FBAR reporting requirements.

On March 18, 2010, President Obama signed the Hiring Incentives to Restore Employment Act of 2010 the (‘HIRE Act’) into law. This Act included provisions similar to an earlier proposed bill called the Foreign Account Tax Compliance Act, or ‘FATCA’, which is how such provisions of the HIRE Act are generally referred to. This dramatically affected most non-US financial institutions, funds and collective investment structures as well as many trustees and family offices investing through these entities by providing the IRS with ‘new tools to find and prosecute US individuals that hide assets overseas’. FATCA includes a number of new provisions that significantly modify the US withholding tax and information reporting regimes affecting US persons, non-US banks and other financial intermediaries and their affiliates, non-US hedge and private equity funds, and certain other non-US investment structures.

On its face, FATCA requires any entity classified as a ‘foreign financial institution’ (‘FFI’) (extremely broadly defined) to either enter into an arrangement by which the FFI agrees to determine which of its account holders are US citizens, green card holders or tax residents (‘US persons’), or entities which are substantially owned by US persons, or suffer 30% gross withholding on all amounts invested into the US. A substantial US owner can have as little as a 10% ownership interest. The withholding would apply to virtually all amounts invested by the FFI into the US, whether for its own account or for the account of its 'account holders', regardless of whether or not they were US persons.

On January 17, 2013, Treasury and the IRS published final regulations to implement FATCA, with additional temporary regulations following on February 20, 2014 to clarify and modify the final regulations (importantly, revising the timeline for the implementation of FATCA). The temporary regulations require withholding agents to make any required FATCA withholding for payments made on or after July 1, 2014. So, the information reporting mechanisms of FATCA, as enforced by the FATCA withholding regime, are currently in force.

Further, a broad network of bilateral intergovernmental agreements between the US and partner jurisdictions for the implementation of FATCA (IGAs) is currently in place – either in final form or agreed to in substance. As a result, FATCA is effectively a matter of domestic law in the array of jurisdictions that have entered into IGAs, providing yet another pressure point for noncompliant US taxpayers to regularise.

Voluntary Disclosure – some history, new procedures and questions

What is Voluntary Disclosure?

A voluntary disclosure is an admission to the IRS that a taxpayer failed to properly report an item of income on his or her US tax return or failed to disclose a required item on a reporting form. A voluntary disclosure will not automatically guarantee immunity from prosecution, however, when a taxpayer truthfully, timely, and completely complies with all provisions of the voluntary disclosure program, the IRS will not recommend criminal prosecution to the US Department of Justice.

Under the OVDI, an attorney contacts the IRS Criminal Investigations Division on a taxpayer's behalf to negotiate a waiver of prosecution prior to filing amended (or unfiled) income tax and information returns and the FBARs.

A voluntary disclosure must be truthful, timely and complete, and the taxpayer must demonstrate a willingness to cooperate (and must in fact cooperate) with the IRS in determining the correct tax liability. The taxpayer must make good faith arrangements with the IRS to pay in full the tax, interest, and any penalties determined by the IRS to be applicable. Voluntary disclosures are not available to all taxpayers, including those with illegal source income (Al Capone need not apply), but may be a viable option for the vast majority of taxpayers with unreported income or unreported foreign accounts.

The voluntary disclosure program requires the disclosure to be timely, that is, received before:

- The IRS has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence such an examination or investigation

- The IRS has received information from a third party (such as an informant, other governmental agency or the media) alerting the IRS to the specific taxpayer's non-compliance

- The IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer

- The IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g., search warrant or grand jury subpoena).

The mere fact that the IRS has made a treaty request or a ‘John Doe’ summons for financial information from a non-US institution will not preclude an individual from participating in the voluntary disclosure program, but such activity may subject a taxpayer to a higher offshore penalty at the rate of 50%. However, taxpayers who appeal the disclosure of tax information in response to a treaty request, without notifying the US Department of Justice, will be ineligible for the 2014 OVDI. The IRS has also indicated that it may announce that taxpayers with accounts at certain non-US financial institutions will not be eligible to participate in the 2014 OVDI. Specific institutions will be posted on the IRS website on a prospective basis so taxpayers will have the opportunity to participate before the effective cut off date.

The 2009 program

- A six-month period allowing taxpayers with unreported offshore income and offshore accounts to make a formal request for participation in the 2009 program (3/23/09 – 10/15/09). The accepted disclosure had to be made before the IRS received information on the taxpayer

- Initial screening was conducted by the Criminal Investigation Division and taxpayers were required to file up to six years of returns and FBARs. Taxpayers were required to pay all past due taxes, interest and delinquency/ accuracy penalties. In addition, there was a 20% Offshore Penalty imposed on the highest aggregate balance of all unreported offshore financial interests during the six year period

- Taxpayers could choose either to be interviewed by the Criminal Investigation Division concerning their offshore assets or file a three-page letter which provided details of the offshore account and offshore advisors. Once taxpayers were cleared by the Criminal Investigation Division, they were assigned a revenue agent who reviewed the tax and information returns and bank information and essentially certified the information on the returns. At the end of the certification process, penalties were determined not to exceed 20% of the highest aggregate value of the offshore asset and a closing agreement was entered into.

2009 program results

- Over 15,000 taxpayers requested participation prior to October 15, 2009

- Subsequent to October 15, 2009, an additional 3,000 taxpayers requested participation

- Early participants in the 2009 program suffered the glitches of a newly established program

- The IRS gradually reacted to the glitches and adopted new procedures, attempting to streamline the process

- Obtaining information from foreign banks was difficult and time-consuming.

Second offshore voluntary disclosure program – the 2011 OVDI

Formally announced by the IRS on February 8, 2011, the 2011 OVDI further centralized the application process.

- Approximately 15,000 taxpayers requested participation before it closed on September 9, 2011
- Preclearance was available by telephone, mail or fax by providing taxpayer identification information
- Once cleared, the taxpayers had to submit to a personal interview or submit the three-page letter disclosing additional information regarding unreported offshore income and unreported offshore assets
- Taxpayers had to file returns or amended returns as applicable for the years 2003 – 2010 no later than December, 9, 2011 (an increase to eight years from the previous program). The December 9, 2011 submission had to include payment of all taxes, interest and delinquency or accuracy penalties. FBARs or amended FBARs also had to be filed for the period 2003 to 2010 (the 2011 FBAR was due by June 30, 2012)
- The Offshore Penalty was 25% versus 20% in the 2009 program, which was imposed on the highest aggregate balance of all unreported accounts and certain offshore assets during the period 2003 to 2010
- The 25% Offshore Penalty was reduced to 12.5% if the aggregate accounts for the years involved did not exceed $75,000. The Offshore Penalty was also reduced to 5% in limited circumstances, including where taxpayers inherited the account, were not actively involved in the account and did not withdraw more than $1,000 in any year from the account. A 5% penalty was also available to certain ‘accidental’ Americans.

Third offshore voluntary disclosure program - the 2012 OVDI

- The 2012 OVDI was formally announced by the IRS on January 9, 2012. Prior to issuance of specific guidance, the IRS announced that it will be similar to the 2011 OVDI and prior guidance issued in the form of 53 frequently asked questions
- The Offshore Penalty was increased to 27.5% (versus 25% in the 2011 program and 20% in the 2009 program)
- The reporting period remained at eight years
- Pursuant to other recent guidance, the IRS has reiterated that other procedures were being developed under which certain US citizens and dual citizens who were delinquent in filing US tax returns but who owed no US tax, may come into compliance with US tax law without penalty. Reduced penalties were applicable even if US taxes are owed but taxpayers were compliant in their country of residence.

Fourth offshore voluntary disclosure program - the 2014 OVDI and 2014 Streamlined Procedure

Features of the 2014 OVDI

- Taxpayers who made voluntary disclosures subsequent to July 1, 2014 will automatically be swept into the new program

- The FAQs make it clear that taxpayers who directly filed unfiled or amended income tax returns and FBAR reports with the IRS and Treasury without participating in a formal IRS program (i.e., taxpayers who filed a 'Quiet' disclosure) are at risk for criminal penalties and higher civil penalties unless they come forward and formally apply for participation in the 2014 OVDI

- An IRS investigation into a taxpayer's bank does not make the taxpayer ineligible as long as the bank has not yet turned over information concerning the specific taxpayer. However, taxpayers holding accounts with foreign financial institutions or facilitators that have been publicly identified as being under investigation or as cooperating with a government investigation may be subject to an increased penalty of 50% of the highest total asset value in all unreported foreign financial accounts and entities. The IRS will post an updated list of these foreign financial institutions or facilitators at http://www.irs.gov/Businesses/International-Businesses/Foreign-Financial- Institutions-or-Facilitators

- In addition to filing initial or amended tax returns, information returns and FBARs for the period, all taxpayers participating in the 2014 OVDI must agree to assessment extensions for income tax and information returns and FBARs. All 2014 OVDI participants must provide copies of their offshore bank statements, regardless of the account balances though the IRS will now accept electronic copies (i.e., using a CD or USB)

- There is no de minimis exception for taxpayers regarding unreported income

- Foreign real estate and other assets are also potentially covered in the Offshore Penalty base if purchased with offshore unreported funds, even if such purchase occurred prior to 2006. Foreign income-producing real estate will be included for purposes of determining the Offshore Penalty under the 2014 OVDI if the income was not reported.

Additional features of the 2014 OVDI

- Revenue agents will not be assigned until the taxpayer files the complete disclosure package and, once assigned, agents do not have any discretion in determining penalties and are not to consider reasonable cause in determining applicable penalties

- Taxpayers have the option to 'opt out' of the 2014 OVDI. Taxpayers who opt out of the program will be assigned for a full audit. While lower penalties may result based upon the facts and circumstances, the IRS will not be limited to the eight years under the OVDI program. If the IRS determines that the taxpayer's returns were fraudulent or if there are tax years for which no returns have been filed, there is no applicable statute of limitations. The IRS has advised it may assess higher penalties such as the 75% fraud penalty and the willful FBAR penalty (greater of $100,000 or 50% of the account balances per year) depending on the relevant facts and circumstances

- Similar to the 2009, 2011 and 2012 programs, taxpayers who reported and paid taxes on all income, but failed to file their FBARs or other information returns should not participate in the 2014 OVDI. Instead, they should file the delinquent reports or returns with a letter of explanation of reasonable cause. No penalties for failure to file information returns will be imposed on such taxpayers unless the IRS does not accept the explanation of reasonable cause

- Individuals who are considering participating in the 2014 OVDI should seek advice from a qualified attorney so that such advice is subject to the attorney-client privilege. The failure to file an income tax return, filing a false income tax return, willfully failing to file an FBAR or filing a false FBAR can be crimes punishable by imprisonment and substantial fines. Legal counsel can help determine if an individual is eligible for the program, evaluate the risks of criminal prosecution and recommend a course of action to come into compliance.

Features of the 2014 Streamlined Procedure

- As discussed above, taxpayers whose failure to file was the result of 'non-willful' conduct may be eligible to participate in the 2014 Streamlined Procedure. Taxpayers must provide a written statement, signed under the penalty of perjury, certifying that their failure to file was non-willful. Non-willful conduct is conduct that is the result of negligence, inadvertence, or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law

- Taxpayers who participate in the 2014 Streamlined Procedure must file federal income tax returns for the three most recent years for which the filing deadline has passed along with any associated informational returns

- Taxpayers must also file FinCEN Form 114 (also known as the Foreign Bank Account Report or FBAR) for the six most recent years for which the filing deadline has passed

- Participants in the 2014 Streamlined Procedure will not be required to pay the accuracy-related penalties which would normally be due. Taxpayers who were not resident in the US during the three year period for filing will not be subject to any additional penalty. For purposes of the 2014 Streamlined Procedure, a taxpayer will be considered non-resident in the US if in any one year of the three year filing period the taxpayer did not have an 'abode' in the US and was physically present outside of the US for at least 330 full days

- Taxpayers who were US resident will be subject to a 5% penalty for the year with the highest aggregate balance/ value of foreign financial assets during the covered tax return period and FBAR period. The value will be based on the December 31st value for each year

- Taxpayers considering participation in the Streamlined procedure should only do so after consultation with an attorney knowledgeable on the subject since there is a risk of not being accepted, and if rejected the taxpayer will not be eligible to go into OVDP or any other voluntary disclosure program and will be subject to audit and higher civil penalties and even criminal prosecution

- Assets that should have been reported on the FBAR or Form 8938 (Statement of Foreign Financial Assets) will be included in the penalty base. However, assets in which the Taxpayer did not have a financial interest will not be included in the penalty base

- The penalty base will include stock of unreported foreign entities reportable on Form 8938 but not their underlying financial accounts unless the entity is a disregarded entity. Also, in determining value no valuation discounts may be taken. Foreign assets not reportable on either an FBAR or Form 8938 will not be included in the penalty base

- Taxpayers who have been tax and reporting compliant for the most recent three years but have failures to report financial assets in the prior three years may also make streamline submissions.

2014 OVDI - questions

Is this a program that people might refuse? Why?

Yes, we have had experiences where individuals, upon receiving a projection of the numbers involved, have said ‘thanks but no thanks’. A 27.5% penalty (in some cases a 50% penalty) on the highest aggregate balance of a taxpayers unreported accounts and financial assets can be a very bitter pill to swallow.

Certain taxpayers may be reluctant to participate because participation in the program requires complete cooperation including disclosure of the names of relatives, private bankers and other offshore advisors.

Taxpayers whose failure to file was non-willful should consider their eligibility for the reduced penalty structure of the 2014 Streamlined Procedures discussed above.

What is a ‘Quiet’ disclosure?

Under the 2014 OVDI, an attorney approaches the IRS Criminal Investigations Division on a taxpayer’s behalf to determine if the taxpayer is eligible for a waiver of prosecution prior to filing amended (or unfiled) income tax returns and the FBARs. A ‘Quiet’ disclosure is where a taxpayer, or his representative, directly files unfiled or amended income tax returns and FBAR reports with the IRS and Treasury without contacting them beforehand.

‘Quiet’ voluntary disclosures are frowned upon by the IRS. A ‘Quiet’ disclosure leaves the taxpayer open to being examined and potentially criminally prosecuted for all years, whereas participating in the OVDI means the taxpayer can be certain that their case is over. At the conclusion of the OVDI, the taxpayer and the IRS sign a closing agreement.

The 2014 expansion of the Streamlined Procedure means that a ‘Quiet’ voluntary disclosure may not be the only choice for a taxpayer who does not wish to participate in the OVDI. Taxpayers who previously filed a ‘Quiet’ disclosure may still be eligible to participate through the new Streamlined Procedure, although once a taxpayer submits returns under the Streamlined Procedure, he or she is no longer eligible to enter into the OVDI.

What other things must be considered in deciding how to go forward?

Cost - Participation in the OVDI costs significantly more than a ‘Quiet’ disclosure or participation in the 2014 Streamlined Procedure in terms of legal fees.

Risk - The OVDI and the Streamlined Procedure are official IRS disclosure programs and are significantly less risky than a ‘Quiet’ disclosure.

Qualification - Not all taxpayers qualify for the 2014 OVDI. For instance, if the IRS has received information on a taxpayer’s foreign accounts, if a taxpayer is currently under review or audit, or if the taxpayer has income from an illegal source, the taxpayer will be declined from participating in the 2014 OVDI. Furthermore, some taxpayers who have merely neglected to file an FBAR, for example, while reporting all of the income on their tax returns, may file back FBARs with no penalty.

What about people outside the United States? Who should be concerned?

Any US citizen, resident or green card holder should be concerned regardless of where they live, along with non-US individuals who do business in the US regularly. However, as noted above, if the failure to file was the result of 'non-willful' conduct, taxpayers may be eligible for the 2014 Streamlined Procedure which requires filing three years of delinquent US tax returns (including information reporting forms) and six years of FBARs without imposition of civil penalties for non-US residents and a 5% penalty for US residents.

What are the procedures for people who did not realize they were US citizens?

'Accidental Americans' (taxpayers who did not realize until recently that they were US citizens or did not realize they had US filing obligations) may be eligible for the Streamlined Procedure but an analysis of their individual situation will be required.

What other measures should people be thinking about?

- Restructuring assets to simplify their reporting in future years
- After completing their voluntary disclosure (and NOT before), transferring funds into a US bank and dissolving any 'sham' structures
- For any new foreign accounts established, making sure any individual that has a financial interest in or has signature authority over such account is aware of their reporting obligation because once a taxpayer's total foreign accounts are over $10,000 each account must be reported, ensuring that any new account established – however small – is reported
- Order bank statements for the prior year well in advance of filing deadlines.

What are some of the penalties for commonly known obligations under the US tax code?

- FBAR – Foreign Bank Account Report (FinCEN Form 114), which is required to be filed by all US citizens and residents, green card holders, and 'persons' (a term of art that includes entities) 'in and doing business in' the US who have a financial interest in or signature authority over financial accounts in foreign countries exceeding $10,000 in the aggregate. The FBAR form is separate from any tax returns that must be filed and is due by June 30 for the prior calendar year (extensions are not available)
  - Negligent failure to file the FBAR for foreign accounts can trigger a penalty of $10,000 per account for every year a taxpayer does not file

- Willful violation of the FBAR reporting requirement can result in a civil penalty equal to the greater of $100,000 or 50% of the account balance at the time of the offense. Willful violations are not eligible for the reasonable cause exception

- If failure to file the FBAR is deemed to be a criminal violation, the penalty can include a fine of up to $250,000, imprisonment for up to five years, or both. If the failure to file is deemed to be part of a criminal activity (i.e., it occurs during the violation of another law or is part of an illegal activity involving more than $100,000 in a 12 month period), the maximum fine increases to $500,000 and the possibility of imprisonment increases to up to 10 years

- Each unreported bank account and each calendar year constitutes a separate violation, so, with multiple accounts unreported for several years, a taxpayer could face literally dozens of separate penalties - each of which could potentially trigger the maximum fine.

• Failing to file Form 3520, Annual Return to Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts. Taxpayers must also report various transactions involving foreign trusts, including the creation of a foreign trust by a United States person, transfers of property from a United States person to a foreign trust and receipt of distributions from foreign trusts. This return also reports the receipt of gifts or bequests from foreign persons. The penalty for failing to file each one of these information returns, or for filing an incomplete return, is 35% of the gross reportable amount, except for returns reporting gifts or bequests, where the penalty is 5% of the gift per month, up to a maximum penalty of 25% of the gift. The penalty may be excused if reasonable cause for failure to report can be established

• Failing to file Form 3520-A, Information Return of Foreign Trust With a US Owner. United States persons with various interests in and powers over foreign trusts must report these interests. The penalty for failing to file each one of these information returns or for filing an incomplete return is 5% of the gross value of trust assets determined to be owned by the United States person

• Failing to file Form 5471, Information Return of US Person with Respect to Certain Foreign Corporations. Certain United States persons who are officers, directors or shareholders in certain foreign corporations (including International Business Corporations) are required to report certain information. The penalty for failing to file each one of these information returns is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return

• Failing to file Form 5472, Information Return of a 25% Foreign-Owned US Corporation or a Foreign Corporation Engaged in a US Trade or Business. Taxpayers may be required to report transactions between a 25% foreign-owned domestic corporation or a foreign corporation engaged in a trade or business in the United States and a related party. The penalty for failing to file each one of these information returns, or to keep certain records regarding reportable transactions, is $10,000, with an additional $10,000 added for each month the failure continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $50,000 per return

• Failing to file Form 926, Return by a US Transferor of Property to a Foreign Corporation. Taxpayers are required to report transfers of property to foreign corporations and other information. The penalty for failing to file each one of these information returns is 10% of the value of the property transferred, up to a maximum of $100,000 per return, with no limit if the failure to report the transfer was intentional

- Failing to file Form 8938 Information Return of Specified Foreign Financial Assets. US individuals are required to report their interests in Specified Foreign Financial Assets if the values of their interest in the asset meets a certain threshold amount. A Specified Foreign Financial Asset includes foreign bank accounts, investment accounts, mutual funds, interests in foreign corporations and foreign trusts. Unmarried US residents or those filing separate income tax returns are required to report an interest in a 'Specified Foreign Financial Asset' that has a market value greater than $50,000 at the end of the year, or greater than $75,000 at any time during the year. Married US residents filing jointly satisfy the reporting threshold only if the total value of specified foreign financial assets is more than $100,000 on the last day of the tax year or more than $150,000 at any time during the tax year. The income threshold increases for unmarried (or married filing separately) US persons living abroad to $200,000 on the last day of the tax year, or $300,000 at any time during the tax year. Married taxpayers residing outside the US who file a joint return must report only if the total value of specified foreign financial assets is more than $400,000 on the last day of the tax year or more than $600,000 at any time during the tax year.

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