

WSBA – CLE – Timely Topics in Taxation
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Who Must File the FBAR?

- **A United States person** must file an FBAR if that person has:
 - A financial interest in;
 - Signature authority over; or
 - Any other authority over any financial account(s) in a foreign country if their aggregate value exceeds \$10,000 at any time during the calendar year

FBAR in General

- U.S. Citizens and residents must report and pay taxes on worldwide income
- FBAR is not a tax return – it is an information report filed with the Treasury on or before June 30th

Potential Consequences of Offshore Noncompliance - FBAR

- **Criminal**

- Up to 5 years or \$250,000 or both

- **Civil**

- Penalties

- FBAR Penalty

- “Willfulness” Penalty

- Up to greater of \$100,000 or 50% of the account balance per account, per filer, per year

- Non-Willful Penalty

- Up to \$10,000 per account, per filer, per year

- Mitigation provisions may be available for both willful and non-willful violation

Potential Consequences of Offshore Noncompliance – Other Information Returns

- Civil Penalties
 - Form 3520/3520-A: \$10,000
 - 5%, 25%, 35% . . . and up
 - Form 5471: \$10,000, up to \$50,000
 - Form 5472: \$10,000, up to \$50,000
 - Form 8858: \$10,000, up to \$50,000
 - Form 8865: \$10,000 and up
 - Form 926: 10% and up
 - Form 8938: \$10,000, up to \$50,000

Loud Voluntary Disclosure

- Only if criminal or anxiety or need closure
- No illegal source
- Complete
- Truthful
- Cooperate
- Timely

Loud Voluntary Disclosure

Program	Offshore Penalty	Tax	Period	
2009 OVDP	20%	T, I, P*	8 years	Income Tax Information Returns**
2011 OVDI	25%	T, I, P*	8 years	Income Tax Information returns**
2012 OVDP	27.5%	T, I, P*	8 years	Income Tax Information returns**
Streamlined	0 Reside in Foreign Country (RRSP)	T, I*	6/3 years	Income Tax Information returns**
Other Programs	12.5% < \$75,000%	T, I, P*	8 years	Income Tax Information returns**
	5% Reside in foreign country	T, I, P*	8 years	Income Tax Information returns**
	5% inherited	T, I, P*	8 years	Income Tax Information returns**
Opt Out	?	?	8 years	Income Tax Information Returns**

*Tax (Income/Gift/Estate), PFIC, Interest, Penalties - 20% Accuracy or 22.5% FTF and 25% FTP

**FBAR, 3520/3520-A, 5471, 5472, 8858, 8865, 926, 8938



Loud Voluntary Disclosure

- Streamlined
- Reasonable cause
- Mitigation provision

Quiet Voluntary Disclosure

- 3, 6, 8 years?
- Citizenship – 5 years
- Exit tax – 5 years
- Risk of Audit
- Greater penalties?

FAQ Option

- FAQ 17: FBAR
 - Reported income / no tax due
 - Zero penalties
- FAQ 18: 5471 / 3520 / 3520-A
 - Reported income / no tax due
 - Zero penalties

Do NOT do OVDP

Future Compliance Only

- Tax Practitioner
 - Ethical
 - Criminal
 - OPR
- FATCA