

INTERNATIONAL

An aerial photograph of a winding road through a dense forest, overlaid with a blue tint. The road curves through the trees, and a small building is visible in the lower right quadrant of the road's path.

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Wipfli Tax Update 2021

Topics to Be Covered

- Foreign Bank Account Reporting (Form 114)
- Foreign Withholding
- Global Tax Developments
- New Schedules K-2 & Schedule K-3
- Proposed Legislation

Foreign Bank Account Reporting (FBAR)

- Aggregate foreign assets exceed US\$10,000
 - ▶ Use the highest value for each asset during a calendar year
 - ▶ Exchange rate is the end of year exchange rate
 - Best practice is to use the US Treasury exchange rate
 - ▶ Typical assets considered (not inclusive)
 - Bank accounts, retirement accounts, foreign partnerships, foreign grantor trusts, foreign pensions, foreign stock and indirect ownership.
 - Indirect ownership is more than 50% of the voting stock, shares or units in a foreign entity
- Taxpayer has signature authority over a foreign bank account

FBAR Additional Requirements

- Reporting the income on Foreign Accounts
- Form 8938
 - ▶ Use the year end exchange rate
 - ▶ Two values to be used to determine filing requirements
 - Year end and
 - Highest value during calendar year
 - ▶ Taxpayer filing status dictates when the foreign accounts needs to be reported.
 - ▶ Typically, if an individual taxpayer is required to file Form 114 they are also required to file Form 8938

FBAR Common Issues

▶ Foreign Currency Exchange Rate

- Use year end rate for filing not the spot rate when the account was at its highest value
- Seeing the \$ symbol and assuming it is in US dollars

▶ Foreign Retirement Accounts

- Easy to miss as distributions do not come out until a later date

▶ Indirect ownership of foreign account via a pass-through entity

▶ Missing additional Schedules

- 1040 & 1065 Schedule B questions
- 1120, 1120S Schedule N questions

FBAR Missed Filings

▶ Penalties & Criminal Charges

- \$10,000 penalty per violation, if the taxpayer acted willfully a civil penalty of the greater of \$100,000 or 50% of the balance in the account at the time of the violation. Willful violations may also be subject to prison time up to 5 years.
- CPA filing own return assessed \$663,771 of penalties for failure to file for willful and late filing for tax years 2006-2010.
- Neurosurgeon 3 years of probation prosecutors asked for 41 to 51 months in prison.
- Jurisdictions are not consistent on penalties in recent cases.

FBAR Missed Filings

- ▶ Getting into compliance with rules depends upon each taxpayer's specific facts and circumstances
- ▶ Delinquent Submission Procedures
 - Not file FBAR for the year in question
 - Not under civil or criminal investigation by the IRS
 - Have not been contacted by the IRS about late FBARs
- ▶ Streamline Process
 - Certification by the taxpayer(s) that missed filings were not willful
 - File amended or late form 1040s for past three years
 - File Form 114 6 previous years
 - Penalties and interest are due with filing of Form 14653 or Form 14654
 - 5% of this highest aggregate balance/value of the taxpayer's foreign asset.
 - Interest is based on statutory rates

Foreign Withholding

- ▶ Foreign withholding regimes :
 - U.S. withholding on payments to non-resident aliens ("NRAs") and foreign corporations ("FCs") (commonly referred to as "Chapter 3 Withholding").
 - Foreign Account Tax Compliance Act-Chapter 4 Withholding
 - Partnership withholding (IRC §1446 withholding)
 - Foreign Investment in Real Property Tax Act (IRC §1445 withholding)
- ▶ Multiple regimes can apply to various types of payments.
- ▶ Withholding agents must consider all types of withholding when determining obligations.

Foreign Withholding

▶ Chapter 3

- Generally, 30% withholding
- Can be reduced with the use of income tax treaties

▶ Partnership

- Foreign partner income taxed at the highest marginal rate
- Withholding completed by the partnership

▶ Foreign Real Estate

- Withholding 0-21 percent
- Facts and circumstances dictate withholding rate

Foreign Withholding

▶ Impact to Withholding Agents

- Should obtain documentation from all foreign payees using the Form W-8 Series, form is good for the year of receipt plus 3 years
- Determination of withholding and information reporting obligations before paying
- Remitting withholding tax and filing required information returns
 - 1042 series of filings
 - 8804, 8805 for Partnerships
 - 8288 Series for Foreign Real Estate Holdings

Global Tax Developments

- BEPS (Base Erosion and Profit Shifting) 2.0
 - ▶ Pillar One – Reallocation of Taxes Amongst Countries
 - ▶ Pillar Two – Global Minimum Tax
 - ▶ Finance ministers of G-20 and 134 countries signed off on plan August 31, 2021.
- Digital Services Tax (DST)
 - ▶ Tax on companies that have no physical presence in a country
 - ▶ As of July 15, 2021 35 national have proposed or implemented DST
- Country-By Country Reporting
 - ▶ Transfer pricing documentation
 - ▶ Reporting of economic activity amongst tax jurisdictions

New Schedules K-2 and K-3

- The IRS has prescribed new Schedules K-2 and K-3 to Forms 1065, 1120-S and 8865 for tax years beginning with 2021
- Schedule K-2
 - ▶ Not required if the entity has no foreign activity and no foreign partners
 - ▶ Designed to provide information to owners that will flow into other international forms
- Schedule K-3
 - ▶ Mimics Schedule K-2, but shows the owners applicable share of foreign information reported
- IRS Notice 2021-39
 - ▶ No penalties will apply in the 2021 filing season if the taxpayer establishes that it made a good faith effort to comply to the requirements per Schedules K-2 & K-3 Instructions

Proposed Legislation – as of Nov 22, 2021

- Global Intangible Low-Taxed Income (GILTI)
 - ▶ Country-By-Country Calculation
 - ▶ Reduction in deduction under IRC Section 250
- Foreign Derived Intangible Income (FDII) Deduction
 - ▶ Reduction in deduction allowed
 - ▶ Revisions to the overall calculation
 - ▶ Removal of Royalty income
- Foreign Tax Credit changes
 - ▶ No carryback and only a 5-year carryforward
 - ▶ Country by country calculation
- Other Items
 - ▶ Base Erosion and Anti-Abuse Tax changes IRC Section 59A
 - ▶ New Interest Limitations under IRC Section 163(n)
 - ▶ Modifications to IRC Section 245A dividend received deduction
 - ▶ Modification to basis adjustments relating to PTEP under IRC Section 961



Thank You

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