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Foreign Bank Account Reporting and Voluntary Compliance: What You Need to Know Now

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Katten Muchin Rosenman LLP

19th Floor Conference Center
525 West Monroe Street • Chicago

Jenny Louise Johnson

Partner, Co-chair,
Tax Controversy Practice
Katten Muchin Rosenman LLP

Gil M. Soffer

Partner, Co-chair,
National White Collar Practice
Katten Muchin Rosenman LLP

Ziemowit T. Smulkowski

Partner, Co-chair,
Tax Controversy Practice
Katten Muchin Rosenman LLP



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Katten Muchin Rosenman LLP
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Partner, Co-Chair, National White Collar Practice
Katten Muchin Rosenman LLP
- **Ziemowit T. Smulkowski**
Partner, Co-Chair, Tax Controversy Practice
Katten Muchin Rosenman LLP

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Jenny Louise Johnson

Partner, Co-chair,
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CIRCULAR 230 DISCLOSURE: Pursuant to Regulations Governing Practice Before the Internal Revenue Service, any tax advice contained herein is not intended or written to be used and cannot be used by a taxpayer for the purpose of avoiding tax penalties that may be imposed on the taxpayer.

What is an FBAR and how does it relate to income reporting obligations?

- The Report of Foreign Bank and Financial Accounts ("FBAR"), Treasury Form 90-22.1, is a creation of the Bank Secrecy Act.
- The FBAR gathers information for the database of the Financial Crimes Enforcement Network, and can be shared with any law enforcement agency that requests it.
- Form 1040, Schedule B, Part III, question 7a requires taxpayers to answer whether they have signature authority or a financial interest in any foreign account.

What does the new FBAR require? How is it different?

New FBAR Requirements

Who Must File the FBAR: Each United States person who has a financial interest in or signature or other authority over any foreign financial accounts, including bank, securities, or other types of financial accounts, in a foreign country, if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year, must report that relationship each calendar year by filing this report with the Department of the Treasury on or before June 30, of the succeeding year.

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New FBAR Requirements

- United States Person: The new FBAR significantly expanded who qualifies as a United States Person:
 - A citizen or resident of the United States, or a person in and doing business in the United States.
 - Note that foreign persons now must provide a foreign identification number.
 - The term 'person' includes individuals and all forms of business entities, trusts, and estates.
 - Entities that are disregarded for tax purposes (such as limited liability companies that are owned by one individual and that do not elect to be treated as corporations for tax purposes) are not disregarded for FBAR reporting purposes.

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New FBAR Requirements

- Financial Interest:
- A United States person has a financial interest in:
 - Each account for which such person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non–United States persons.

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New FBAR Requirements

- Financial Interest:
- A United States person has a financial interest in:
 - Each account for which the owner of record or holder of legal title is:
 - (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the United States person;
 - (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock or more than 50 percent of the voting power for all shares of stock;
 - (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income, taking into account any special allocation agreement) or more than 50 percent of the capital of the partnership; or
 - (d) a trust in which the United States person either has a present beneficial interest, either directly or indirectly, in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

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New FBAR Requirements

- Financial Interest:
- A United States person has a financial interest in:
 - Each account for which the owner of record or holder of legal title is a trust, or a person acting on behalf of a trust, that was established by such United States person and for which a trust protector has been appointed.
 - A trust protector is a person who is responsible for monitoring the activities of a trustee, with the authority to influence the decisions of the trustee or to replace, or recommend the replacement of, the trustee.
 - Note that this now clearly includes *stiftungs*, in which a trust protector is in place.

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New FBAR Requirements

- Signature or Other Authority:
- A United States Person has *signature authority* if that person can control the disposition of money or other property in the account by delivery of a document containing his signature to the bank or other person with whom the account is maintained.
- A person with *other authority* over an account is one who can exercise power similar to signature authority by direct communication, either orally or by some other means, to the bank or other person with whom the account is maintained.
- Note that when a United States person has authority over a financial account in which a non- United States person has a financial interest, the person with the financial interest must now be identified.

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New FBAR Requirements

- Special Considerations for Corporations and Corporate Employees:
 - Corporations *and* individual employees who hold signature authority over corporate accounts are required to file an FBAR even if the employee has no personal interest in the account. Therefore, in many instances, at least two FBARs must be filed for each corporate account.
 - An officer or an employee of a domestic corporation whose equity securities are listed on a national securities exchange or which has assets exceeding \$10 million and 500 or more shareholders of record, need not file a report concerning the authority over a foreign financial account of the corporation if s/he has NO personal financial interest in the account and has been advised, in writing, by the chief financial officer of the corporation that the corporation has filed a current report that includes that account.

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New FBAR Requirements

- “Financial Account”: The new FBAR expanded “financial accounts” to include:
 - Any bank, securities, securities derivatives or other financial instruments accounts. Such accounts generally also encompass any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund (including mutual funds). The term also means any savings, demand, checking, deposit, time deposit, or any other account (including debit card and prepaid credit card accounts) maintained with a financial institution or other person engaged in the business of a financial institution. Individual bonds, notes, or stock certificates held by the filer are not a financial account nor is an unsecured loan to a foreign trade or business that is not a financial institution.
 - Note that the definition now explicitly includes debit card and prepaid credit card accounts.

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New FBAR Requirements

- “Financial Account”:
- IRS private guidance issued 10/22/07:
 - “[Although] a trust is generally not a foreign account for FBAR purposes, it can be if, for example, it is an investment trust similar in function to a mutual fund with account holders holding an equity in the trust.”
 - Note, however, that a domestic trust is a United States person subject to the FBAR reporting requirements, and a beneficiary of the trust may have a financial interest in foreign accounts held by the trust.
 - “Since a cash surrender value insurance policy can be used to store cash and withdraw it at a later time, it is treated as a financial account with a financial institution for FBAR purposes. . . . [A] United States citizen does not have to report being the beneficiary of a foreign life insurance policy. If, on the other hand, the United States citizen is a policy holder of a life insurance policy located in a foreign country, and the cash surrender value of the policy exceeds \$10,000, the United States citizen is required to report the policy on an FBAR.”

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New FBAR Requirements

- Aggregate value of these financial accounts exceeds \$10,000:
 - The largest value during the year is determined separately for each account (including the accounts that did not exceed \$10,000) and added together.
 - The “maximum value” of an account is the largest amount of currency and non-monetary assets that appear on any quarterly or more frequent account statements issued for the applicable year. If periodic account statements are not issued, the maximum value is the largest amount of currency or non-monetary assets in the account at any time during the year. Foreign currency must be converted using the official exchange rate at the end of the year. The value of stock, other securities or other non-monetary assets in an account is the fair market value at the end of the calendar year or, if the asset is withdrawn from the account, the fair market value at the time of the withdrawal.
 - Note that the form now requires the exact maximum value of the account as opposed to check boxes with ranges, the largest being over \$1 million.

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New FBAR Requirements

- Issues involving Decedents:
- IRS private guidance issued 10/22/07:
 - If a taxpayer is deceased and the Personal Representative of the Estate discovers that an FBAR was never filed by the taxpayer and believes that the taxpayer had foreign financial accounts that may have had an aggregate amount above \$10,000, the representative should file an FBAR for the estate, but will not be expected to file FBARs that the decedent should have filed.
 - If penalties were assessed against the deceased taxpayer, the penalties are debts against the estate. No penalty will be assessed if there is reasonable cause for the nonfiling and delinquent FBARs are filed.

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New FBAR Requirements

- Late or Amended FBARs:
- The new FBAR now includes a box noting if it is an amended form.
- If amended, the instructions direct the filer to attach a statement explaining the changes.
- If the FBAR is delinquent, the instructions direct the filer to attach a statement explaining the reason for the late filing.

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FBAR Record-keeping Requirements

- Records of accounts required to be reported on an FBAR must be retained for a period of five years.
- This is now stated explicitly in the instructions to the Form.

What are the risks of failing to properly disclose an interest in or authority over a foreign account?

Risks of Non-Disclosure

- Civil and Criminal penalties may be imposed individually or together.
- The maximum criminal penalties are up to a \$500,000 fine, up to 10 years in prison, or both.
- The maximum civil penalty is a fine of up to the *greater* of \$100,000, or 50 percent of the amount in the account at the time of the violation.
- The penalties apply to each and every annual failure to file an accurate FBAR.

Risks of Non-Disclosure

Violation	Civil Penalties	Criminal Penalties	Comments
Non-Willful Violation	Up to \$10,000 for each negligent violation	N/A	31 United StatesC. § 5321(a)(5)(B)
Willful – Failure to File FBAR or retain records of account	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	Up to \$250,000 or 5 years or both	31 United StatesC. § 5321(a)(5)(c); 31 United StatesC. § 5322(a); and 31 C.F.R. § 103.59(b) for criminal. The penalty applies to all United States persons.
Willful – Failure to File FBAR or retain records of account while violating certain other laws.	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	Up to \$500,000 or 10 years or both	31 United StatesC. § 5322(b) and 31 C.F.R. § 103.59(c) for criminal. The penalty applies to all United States persons.
Knowingly Filing False FBAR	Up to the greater of \$100,000, or 50 percent of the amount in the account at the time of the violation.	\$10,000 or 5 years or both	18 United StatesC. § 1001, 31 C.F.R. § 103.59(d) for criminal. The penalty applies to all United States persons.

How have current events and the enforcement policies of the new administration changed the risk analysis for those with undisclosed foreign accounts?

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IRS Initiatives

- Offshore Credit Card Project
 - targeted use of credit cards by United States taxpayers to withdraw funds from offshore accounts
 - recovered over \$3.3 million in taxes from United States taxpayers
- Offshore Merchant Account Initiative
 - targeted United States merchants using credit cards with direct deposit arrangements into offshore accounts
 - investigation is ongoing.

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John Doe Summons

- Standards:
 - court approval
 - relates to investigation of particular person or ascertainable class of persons
 - reasonable basis for believing non-compliance with tax laws
 - information and identities sought not readily available from other sources
- Example: First Data Corporation
 - petition for leave to serve 250 John Doe summonses filed 4/15/09

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Recent Enforcement Action: UBS

- February 2009: UBS enters into deferred prosecution agreement and pays \$780 million fine
- DPA requires UBS to comply with enforcement of John Doe summonses after appellate remedies are exhausted
- UBS turns over approximately 250 names to United States authorities
 - April 2, 2009: UBS account holder Michael Rubenstein indicted for filing false tax return
 - April 14, 2009: UBS account holder Robert Moran pleads guilty to filing a false tax return
- On May 1, 2009, UBS and Switzerland file briefs opposing enforcement of the John Doe summons

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Treaty Developments: Liechtenstein

- December 2008: United States signs tax information exchange agreement (TIEA) with Liechtenstein
- TIEA grants United States access to confidential client data in certain tax evasion investigations
- TIEA erases distinction between tax fraud and tax evasion

Latest Word From IRS Commissioner Doug Shulman

- Testimony to Congress, March 31, 2009:
 - “The IRS has been steadily increasing the pressure on offshore financial institutions that facilitate concealment of taxable income by US citizens. That pressure will only increase under my watch. Those who are unlawfully hiding assets should come and get right with their government through our voluntary disclosure process.”
 - “We draw a clear line between those individual taxpayers with offshore accounts who voluntarily come forward to get right with the government and those who continue to fail to meet their obligations.”
- IRS Strategic Plan, 2009-2013
 - Coordinate and cooperate with other nations
 - Focus on international financial activities
 - Explore innovative enforcement strategies that “keep pace with the realities of a globalized tax environment”

How does the Voluntary Disclosure Practice Work?

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Voluntary Disclosure Practice

What is Voluntary Disclosure?

- A voluntary disclosure occurs when the communication is truthful, timely, complete, and when:
 - The taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his or her correct tax liability; and
 - The taxpayer makes good faith arrangements with the IRS to pay in full the tax, interest and any penalties determined by the IRS to be applicable.

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Voluntary Disclosure Practice

When is a Disclosure Timely?

- Disclosure is *timely* if it is received by the IRS before:
 - The IRS has initiated a civil examination or criminal investigation of the taxpayer, or has notified the taxpayer that it intends to commence an examination or investigation;
 - The IRS has received information from a third party (e.g. informant, other governmental agency, or the media) alerting the IRS to the specific taxpayer's noncompliance;
 - The IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer; or
 - The IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g. search warrant, grand jury subpoena).

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Voluntary Disclosure Practice

- Approaching the IRS anonymously does not constitute a voluntary disclosure until the identity of the taxpayer is provided.
- The voluntary disclosure practice does not apply to taxpayers with illegal source income.

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***What are the terms of the new
Voluntary Disclosure Initiative
announced by the IRS on
March 26, 2009?***

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Voluntary Disclosure: March Memos

- On March 26, 2009, IRS disclosed three internal memos relating to application of the general Voluntary Disclosure dated March 25, 2009, Practice to cases involving offshore issues.
 - One establishes the penalty framework for voluntary disclosures regarding unreported offshore accounts
 - One describes the routing of voluntary disclosure cases
 - One emphasizes the priority of offshore case development

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Voluntary Disclosure: March Memos

- Penalty framework:
 - IRS will assess all taxes and interest due going back six years; taxpayer must file or amend all returns and FBARs.
 - IRS will assess either an accuracy or delinquency penalty on all years (no reasonable cause exception may be applied).
 - In lieu of all other penalties that may apply, including FBAR and information return penalties, assess a penalty equal to 20% of the amount in foreign bank accounts / entities in the year with the highest aggregate account / asset value.

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Voluntary Disclosure: March Memos

- Penalty framework:
 - The 20% penalty is reduced to 5% if:
 - The taxpayer did not open or cause any accounts to be opened or entities formed,
 - There has been no activity in any account or entity (no deposits, withdrawals, etc.) during the period the account / entity was controlled by the taxpayer, and
 - All applicable United States taxes have been paid on the funds in the accounts / entities (where only account / entity earnings have escaped United States taxation).

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Voluntary Disclosure: March Memos

- This penalty framework only applies to taxpayers who make voluntary disclosure requests, and who fully cooperate with the IRS, both civilly and criminally.
- This penalty framework will remain in effect for six months (until September 23, 2009).

Voluntary Disclosure: March Memos

- Routing of voluntary disclosure cases:
 - All voluntary disclosure requests are initially screened by Criminal Investigation (CI) to determine eligibility.
 - Voluntary disclosure requests containing offshore issues are now forwarded by CI to the Philadelphia Offshore Identification Unit for civil processing.

Voluntary Disclosure: March Memos

- Offshore case development:
 - Offshore cases are work of the highest priority.
 - In addition to normal information gathering tools, examiners should request foreign-based information under applicable treaties and tax information exchange agreements.
 - Examiners should be alert to the badges of fraud and consult with Fraud Technical Advisors in developing cases for criminal referrals or the assertion of the civil fraud penalty.
 - Last Chance Compliance Initiative is revoked.

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***Does Participation in the IRS
Voluntary Disclosure Program
guarantee no criminal prosecution?***

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Criminal Implications of Voluntary Disclosure

- *Internal Revenue Manual* 9.5.11.9:
 - (1) It is currently the practice of the IRS that a voluntary disclosure will be considered along with all other factors in the investigation in determining whether criminal prosecution will be recommended. This voluntary disclosure practice creates no substantive or procedural rights for taxpayers, but rather is a matter of internal IRS practice, provided solely for guidance to IRS personnel. Taxpayers cannot rely on the fact that other similarly situated taxpayers may not have been recommended for criminal prosecution.
 - (2) A voluntary disclosure will not automatically guarantee immunity from prosecution; however, a voluntary disclosure may result in prosecution not being recommended. This practice does not apply to taxpayers with illegal sources of income.

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What Situations Warrant Involvement of Criminal Tax Counsel?

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Criminal Tax Counsel Involvement

- Any prior failure to comply with the income reporting or FBAR filing requirements.
 - There is now an agent in the Detroit Service Center who reviews all late-filed FBARs, making stealth disclosure no longer feasible.
- Any accounts containing funds that cannot be proven to be from a legal source.
- Any accounts containing unreported income.
- Any other circumstances that would make increased scrutiny by offshore experts and fraud detection specialists uncomfortable.



JENNY LOUISE JOHNSON
PARTNER

Chicago

p / 312.902.5636

f / 312.577.4717

jenny.johnson@kattenlaw.com

Jenny Louise Johnson is co-chair of the Tax Controversy Practice. Ms. Johnson has substantial experience handling criminal and civil tax disputes. She represents clients through all stages of criminal and civil tax investigations and litigation, including sensitive audits and examinations, search warrants, grand jury subpoenas, negotiated resolutions with the IRS and the Department of Justice, trials in federal district court and Tax Court, sentencings, and appeals. Working closely with other attorneys in the firm, Ms. Johnson handles disputes involving income taxes, estate and gift taxes, excise taxes, employee plan matters, and tax exempt bonds. Ms. Johnson's recent criminal defense experience involves a lengthy jury trial, two successful appeals to the Court of Appeals for the Seventh Circuit, frequent representation of targets, subjects and witnesses in grand jury investigations, negotiation of numerous plea agreements, and sentencings in which her clients received punishments well below the guideline range. On the civil side, Ms. Johnson recently tried two cases on the same Tax Court docket, one of which was the first case involving a "Midco" listed transaction to be tried in the Tax Court. Ms. Johnson has also attained favorable settlements of many disputes with the IRS, before or during litigation, and routinely provides behind-the-scenes strategic counseling to clients and their other advisors on potential or existing tax-related disputes.

In addition to handling employee plan qualification disputes with the IRS, Ms. Johnson is a key member of the firm's ERISA Litigation Practice, representing plans, plan sponsors, and fiduciaries in both investigations and litigation. Drawing on the depth of expertise in ERISA and ESOPs in the firm's Employee Benefits Practice, Ms. Johnson has recently represented an independent trustee of an ESOP in an investigation by the Department of Labor, and litigated on behalf of trustees alleging that other fiduciaries violated ERISA by breaching their fiduciary duties and engaging in prohibited transactions. Ms. Johnson also recently played a significant role representing a plan sponsor who faced an IRS threat of disqualification of its qualified plans, culminating in a favorable closing agreement after protracted negotiations that involved the highest-ranking Employee Plans officials in the IRS.

Ms. Johnson also continues to represent clients in other types of complex litigation, including cases involving intellectual property, health care fraud, financial crimes, RICO, Foreign Corrupt Practices Act, and commercial disputes. Ms. Johnson is particularly interested in the criminal enforcement of intellectual property rights, which combines her knowledge of trademark and copyright law with her experience conducting investigations and handling criminal cases. Ms. Johnson is dedicated to the provision of *pro bono* services, and received the firm's Pro Bono Award in 2005 in recognition of her commitment to representing children who are charged with crimes. She continues to represent children in juvenile delinquency proceedings, immigrants seeking asylum, and those who have been wrongly convicted.



GIL M. SOFFER
PARTNER

Chicago

p / 312.902.5474

f / 312.577.4767

gil.soffer@kattenlaw.com

Gil M. Soffer is Co-Chair of the firm's National White Collar Practice. He joined the Firm in August 2000, after six years as a federal prosecutor. Mr. Soffer concentrates his practice in white collar criminal litigation, particularly corporate fraud litigation; corporate investigations; insurance litigation; and anti-fraud counseling and litigation. Mr. Soffer is also involved in a wide range of matters involving reinsurance, health care, and alternative dispute resolution.

In January 2008, Mr. Soffer accepted a position as Counsel to the Deputy Attorney General in Washington, D.C., and shortly thereafter was appointed Associate Deputy Attorney General. During his year-long term with the Department of Justice, Mr. Soffer advised the Deputy Attorney General on criminal matters at the Department, with particular emphasis on corporate fraud prosecutions. He played an integral role in drafting the Department's Corporate Monitor Principles and Corporate Charging Principles, and provided training on the latter policy to U.S. Attorneys' Offices nationwide. Mr. Soffer also managed the President's Corporate Fraud Task Force and briefed members of Congress about criminal matters within the Department of Justice.

Mr. Soffer had previously served in the Department of Justice when he was an Assistant U.S. Attorney in the United States Attorney's Office in Chicago (1994 – 2000). In that capacity, he prosecuted a wide range of federal crimes, including bank, mail, wire, tax, and insurance fraud; narcotics and firearms trafficking; bank robbery; embezzlement; and money laundering. In November 1996, Mr. Soffer received the Director's Award for Superior Performance as an Assistant U.S. Attorney from then-Attorney General Janet Reno.

Mr. Soffer graduated *magna cum laude* from Brown University in 1986 and earned his J.D., *cum laude*, from Harvard Law School in 1989. Upon graduating from law school, Mr. Soffer clerked in the U.S. District Court for the Northern District of Illinois under Judge John A. Nordberg. After his clerkship, Mr. Soffer became an associate with the law firm of McCutchen, Doyle, Brown & Enersen in San Francisco, where he practiced in the general litigation department.

Mr. Soffer is a member of the American Bar Association and is admitted to practice in Illinois and California. He has served as an Adjunct Professor at Loyola University Law School, where he taught Federal Criminal Prosecution. Mr. Soffer has lectured on subjects ranging from corporate internal investigations to deferred prosecution agreements, and appeared regularly as a legal expert on the ABC News Now program *Guilt or Innocence*.



ZIEMOWIT T. SMULKOWSKI
PARTNER

Chicago

p / 312.902.5651

f / 312.577.4583

ziemowit.smulkowski@kattenlaw.com

Ziemowit T. Smulkowski concentrates his practice in federal income tax issues related to mergers and acquisitions, private equity, venture capital, real estate investments and management compensation. Mr. Smulkowski works extensively with the Firm's Corporate, Commercial Finance and Real Estate practices. His representative transactions include acquisitions and dispositions of businesses for both financial and strategic investors, cross-border investments, debt and equity investments in real estate joint ventures, representing senior and mezzanine lenders, representing sellers of closely held businesses, and representing management teams in connection with the acquisition or disposition of their employers. Mr. Smulkowski also works with the Firm's Litigation and Dispute Resolution practice on various tax controversy matters. He is a member of the Chicago Bar Association.

Prior to joining the Firm, Mr. Smulkowski worked in the Chicago office of Coopers and Lybrand LLP (now known as PricewaterhouseCoopers). Mr. Smulkowski graduated from Loyola University Chicago in 1993 with a Bachelor of Arts degree in Political Science. He received his Juris Doctor degree from Northwestern University School of Law in 1996.

TAX CONTROVERSY

Katten Muchin Rosenman LLP's Tax Controversy Practice combines the skills of seasoned litigators with the nuanced knowledge of attorneys who focus on tax planning, tax-exempt bonds, estate and gift tax, and employee plans.

Our attorneys represent clients through all stages of sophisticated criminal and civil tax investigations and litigation, including sensitive audits and examinations, search warrants, grand jury subpoenas, negotiated resolutions at all levels within the Internal Revenue Service and the Department of Justice, trials in both federal district court and Tax Court, sentencing, and appeals. We work efficiently to resolve disputes once they exist and also provide guidance to minimize the issues that become the focus of government scrutiny.

Our attorneys have extensive experience both trying cases and resolving disputes outside the courtroom, and we stand ready to employ the strategies that will most effectively achieve our clients' objectives. We have strong working relationships with the Internal Revenue Service and the Department of Justice, and have earned the respect of those who will be sitting across the table or on the bench.

Effective representation throughout the stages of a tax controversy not only increases the likelihood of an advantageous resolution without litigation, but also sets the stage for a far greater chance of success if a case must go to trial. We encourage clients to adopt an approach that gives due consideration to how each decision in the process could impact the final resolution. When our tax controversy practitioners get involved at the initial stages of an audit, we have an opportunity to identify significant issues, develop strategies, provide advice in responding to information

requests and summonses, establish procedures to identify and protect privileged documents, prepare witnesses the IRS seeks to interview, and establish appropriate document retention procedures to preserve evidence. Sometimes it makes sense for us to take a lead role in communicating with the IRS examiners, but strategic reasons often make it more beneficial for us to remain in the background while providing advice that increases our clients' opportunities for a successful result through negotiation or litigation.

In addition to representing individual taxpayers, our tax controversy practitioners represent publicly traded and privately held corporations, trustees of defined contribution plans including leveraged and non-leveraged ESOPs and other ERISA plans, partnerships, limited liability companies, executors, tax-exempt entities, municipal bond issuers, borrowers, underwriters, and advisors, and swap and investment providers.

Representative Experience

The following are examples of some of our recent or pending matters:

- Trial of the first Tax Court case involving a "Midco" listed transaction
- Representation of a plan sponsor that faced an IRS threat of disqualification of its qualified retirement plans
- Representation of targets, subjects and witnesses in numerous complex grand jury investigations, including promoter investigations
- Representation of taxpayers involved in simultaneous criminal and civil tax controversies
- Representation of a business and an individual in connection with a criminal investigation arising out of tax treatment of an estate plan

- Representation of various taxpayers who participated in listed transactions or otherwise violated the tax laws and are seeking to avoid prosecution through participation in the Voluntary Compliance Program
- Representation of a taxpayer through the jeopardy assessment and jeopardy levy process, including evidentiary hearing in federal district court
- Strategic counseling of an estate regarding litigation options in the face of a notice of deficiency involving a family limited partnership interest
- Representation of a taxpayer regarding excise tax allegedly owed as a result of his participation in a prohibited transaction with an employee plan
- Defense of the tax-exemption of senior housing bonds and several issues of municipal advance refunding bonds from attack on the basis of arbitrage considerations
- Representation of a state conduit finance authority in routine audits against borrower hospitals and manufacturing companies
- Calculation and defense of arbitrage rebate on tax-exempt bonds

Contact Us

For more information on our Tax Controversy Practice, please contact:

Jenny Louise Johnson, Co-Chair

312.902.5636 / jenny-louise.johnson@kattenlaw.com

Ziemowit T. Smulkowski, Co-Chair

312.902.5651 / ziemowit.smulkowski@kattenlaw.com

About the Firm

Founded in 1974, Katten Muchin Rosenman LLP is a full-service law firm with more than 600 attorneys in locations across the United States and an affiliate in London. The firm's business-savvy professionals provide clients in numerous industries with sophisticated, high-value legal services, with a focus on corporate, financial services, litigation, real estate, commercial finance, intellectual property and trusts and estates. Among our clients are a wide range of public and private companies, including nearly a third of the Fortune 100, as well as a number of government and nonprofit organizations and individuals. For additional information, visit www.kattenlaw.com.

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4/21/09

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this form after
December 31, 2008****REPORT OF FOREIGN BANK
AND FINANCIAL ACCOUNTS****Do NOT file with your Federal Tax Return**

OMB No. 1545-2038

1 This Report is for Calendar
Year Ended 12/31Amended **Part I Filer Information**

2 Type of Filer			
a <input type="checkbox"/> Individual b <input type="checkbox"/> Partnership c <input type="checkbox"/> Corporation d <input type="checkbox"/> Consolidated e <input type="checkbox"/> Fiduciary or Other—Enter type _____			
3 U.S. Taxpayer Identification Number		4 Foreign identification (Complete only if item 3 is not applicable.)	
If filer has no U.S. Identification Number complete Item 4.		a Type: <input type="checkbox"/> Passport <input type="checkbox"/> Other _____	
		b Number _____ c Country of Issue _____	
5 Individual's Date of Birth MM/DD/YYYY			
6 Last Name or Organization Name		7 First Name	8 Middle Initial
9 Address (Number, Street, and Apt. or Suite No.)			
10 City	11 State	12 Zip/Postal Code	13 Country
14 Does the filer have a financial interest in 25 or more financial accounts?			
<input type="checkbox"/> Yes If "Yes" enter total number of accounts _____			
(If "Yes" is checked, do not complete Part II or Part III, but retain records of this information)			
<input type="checkbox"/> No			

Part II Information on Financial Account(s) Owned Separately

15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country

Signature

44 Filer Signature		45 Filer Title, if not reporting a personal account	46 Date (MM/DD/YYYY)
---------------------------	--	--	-----------------------------

File this form with: U.S. Department of the Treasury, P.O. Box 32621, Detroit, MI 48232-0621

This form should be used to report a financial interest in, signature authority, or other authority over one or more financial accounts in foreign countries, as required by the Department of the Treasury Regulations (31 CFR 103). No report is required if the aggregate value of the accounts did not exceed \$10,000. **See Instructions For Definitions.**

PRIVACY ACT AND PAPERWORK REDUCTION ACT NOTICE

Pursuant to the requirements of Public Law 93-579 (Privacy Act of 1974), notice is hereby given that the authority to collect information on TD F 90-22.1 in accordance with 5 USC 552a (e) is Public Law 91-508; 31 USC 5314; 5 USC 301; 31 CFR 103.

The principal purpose for collecting the information is to assure maintenance of reports where such reports or records have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings. The information collected may be provided to those officers and employees of any constituent unit of the Department of the Treasury who have a need for the records in the performance of their duties. The records may be referred to any other department or agency of the United States upon the request of the head of such department or agency for use in a criminal, tax, or regulatory investigation or proceeding. The information collected may also be provided to appropriate state, local, and foreign law enforcement and regulatory personnel in the performance of their official duties. Disclosure of this information is mandatory. Civil and criminal penalties, including in certain circumstances a fine of not more than \$500,000 and imprisonment of not more than five years, are provided for failure to file a report, supply information, and for filing a false or fraudulent report. Disclosure of the Social Security number is mandatory. The authority to collect is 31 CFR 103. The Social Security number will be used as a means to identify the individual who files the report.

The estimated average burden associated with this collection of information is 20 minutes per respondent or record keeper, depending on individual circumstances. Comments regarding the accuracy of this burden estimate, and suggestions for reducing the burden should be directed to the Internal Revenue Service, Bank Secrecy Act Policy, 5000 Ellin Road C-3-242, Lanham MD 20706.

Part II Continued—Information on Financial Account(s) Owned Separately

Form TD F 90-22.1

Complete a Separate Block for Each Account Owned Separately

Page Number

This side can be copied as many times as necessary in order to provide information on all accounts.

___ of ___

1 Filing for calendar year ____ ____ ____ ____	3-4 Check appropriate Identification Number <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name	
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country

Part III Information on Financial Account(s) Owned Jointly

Form TD F 90-22.1

Page Number

___ of ___

Complete a Separate Block for Each Account Owned Jointly

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ___ ___ ___ ___	3-4 Check appropriate Identification Number <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name	
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation	19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held		
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions		
26 Last Name or Organization Name of principal joint owner		27 First Name of principal joint owner, if known	28 Middle initial, if known
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions		
26 Last Name or Organization Name of principal joint owner		27 First Name of principal joint owner, if known	28 Middle initial, if known
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
24 Number of joint owners for this account	25 Taxpayer Identification Number of principal joint owner, if known. See instructions		
26 Last Name or Organization Name of principal joint owner		27 First Name of principal joint owner, if known	28 Middle initial, if known
29 Address (Number, Street, Suite or Apartment) of principal joint owner, if known			
30 City, if known	31 State, if known	32 Zip/Postal Code, if known	33 Country, if known

Part IV Information on Financial Account(s) Where Filer has Signature or Other Authority but No Financial Interest in the Account(s)

Form TD F 90-22.1

Page Number

___ of ___

Complete a Separate Block for Each Account

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ___ ___ ___ ___	3-4 Check appropriate Identification Number <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name	
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
34 Last Name or Organization Name of Account Owner			35 Taxpayer Identification Number of Account Owner
36 First Name		37 Middle initial	38 Address (Number, Street, and Apt. or Suite No.)
39 City	40 State	41 Zip/Postal Code	42 Country
43 Filer's Title with this Owner			

15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
34 Last Name or Organization Name of Account Owner			35 Taxpayer Identification Number of Account Owner
36 First Name		37 Middle initial	38 Address (Number, Street, and Apt. or Suite No.)
39 City	40 State	41 Zip/Postal Code	42 Country
43 Filer's Title with this Owner			

15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
34 Last Name or Organization Name of Account Owner			35 Taxpayer Identification Number of Account Owner
36 First Name		37 Middle initial	38 Address (Number, Street, and Apt. or Suite No.)
39 City	40 State	41 Zip/Postal Code	42 Country
43 Filer's Title with this Owner			

15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
34 Last Name or Organization Name of Account Owner			35 Taxpayer Identification Number of Account Owner
36 First Name		37 Middle initial	38 Address (Number, Street, and Apt. or Suite No.)
39 City	40 State	41 Zip/Postal Code	42 Country
43 Filer's Title with this Owner			

Part V Information on Financial Account(s) Where Corporate Filer Is Filing a Consolidated Report

Form TD F 90-22.1

Page Number

___ of ___

Complete a Separate Block for Each Account

This side can be copied as many times as necessary in order to provide information on all accounts.

1 Filing for calendar year ___ ___ ___ ___	3-4 Check appropriate Identification Number <input type="checkbox"/> Taxpayer Identification Number <input type="checkbox"/> Foreign Identification Number Enter identification number here:	6 Last Name or Organization Name	
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
34 Corporate Name of Account Owner			35 Taxpayer Identification Number of Account Owner
38 Address (Number, Street, and Apt. or Suite No.)			
39 City	40 State	41 Zip/Postal Code	42 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
34 Corporate Name of Account Owner			35 Taxpayer Identification Number of Account Owner
38 Address (Number, Street, and Apt. or Suite No.)			
39 City	40 State	41 Zip/Postal Code	42 Country
15 Maximum value of account during calendar year reported		16 Type of account a <input type="checkbox"/> Bank b <input type="checkbox"/> Securities c <input type="checkbox"/> Other—Enter type below	
17 Name of Financial Institution in which account is held			
18 Account number or other designation		19 Mailing Address (Number, Street, Suite Number) of financial institution in which account is held	
20 City	21 State, if known	22 Zip/Postal Code, if known	23 Country
34 Corporate Name of Account Owner			35 Taxpayer Identification Number of Account Owner
38 Address (Number, Street, and Apt. or Suite No.)			
39 City	40 State	41 Zip/Postal Code	42 Country

General Instructions

Who Must File this Report. Each United States person who has a financial interest in or signature or other authority over any foreign financial accounts, including bank, securities, or other types of financial accounts, in a foreign country, if the aggregate value of these financial accounts exceeds \$10,000 at any time during the calendar year, must report that relationship each calendar year by filing this report with the Department of the Treasury on or before June 30, of the succeeding year.

Exceptions

An officer or employee of a bank which is currently examined by Federal bank supervisory agencies for soundness and safety need not report that he has signature or other authority over a foreign bank, securities or other financial account maintained by the bank, if the officer or employee has NO personal financial interest in the account.

An officer or employee of a domestic corporation whose equity securities are listed upon any United States national securities exchange or which has assets exceeding \$10 million and has 500 or more shareholders of record need not file such a report concerning signature or other authority over a foreign financial account of the corporation, if he has NO personal financial interest in the account and he has been advised in writing by the chief financial officer or similar responsible officer of the corporation that the corporation has filed a current report, which includes that account. An officer or employee of a domestic subsidiary of such a domestic corporation need not file this report concerning signature or other authority over the foreign financial account if the domestic parent meets the above requirements, he has no personal financial interest in the account, and he has been advised in writing by the responsible officer of the parent that the subsidiary has filed a current report which includes that account. If a United States subsidiary is named in a consolidated FBAR of the parent, the subsidiary will be deemed to have filed a report for purposes of this exception. An officer or employee of a foreign subsidiary more than 50% owned by such a domestic corporation need not file this report concerning signature or other authority over the foreign financial account if the employee or officer has no personal financial interest in the account, and he has been advised in writing by the responsible officer of the parent that the parent has filed a current report which includes that account.

General Definitions

United States Person. The term "United States person" means a citizen or resident of the United States, or a person in and doing business in the United States. See 31 C.F.R. 103.11(z) for a complete definition of "person." The United States includes the states, territories and possessions of the United States. See the definition of United States at 31 C.F.R. 103.11(nn) for a complete definition of United States. A foreign subsidiary of a United States person is not required to file this report, although its United States parent corporation may be required to do so. A branch of a foreign entity that is doing business in the United States is required to file this report even if not separately incorporated under U.S. law.

Financial Account. This term includes any bank, securities, securities derivatives or other financial instruments accounts. Such accounts generally also encompass any accounts in which the assets are held in a commingled fund, and the account owner holds an equity interest in the fund (including mutual funds). The term also means any savings, demand,

checking, deposit, time deposit, or any other account (including debit card and prepaid credit card accounts) maintained with a financial institution or other person engaged in the business of a financial institution. Individual bonds, notes, or stock certificates held by the filer are not a financial account nor is an unsecured loan to a foreign trade or business that is not a financial institution.

Account in a Foreign Country. A "foreign country" includes all geographical areas located outside the United States. See "United States Person" above 31 C.F.R. 103.11(nn) for a definition of United States. The geographical location of the account, not the nationality of the financial entity institution in which the account is found determines whether it is in an account in a foreign country. Report any financial account (except a military banking facility) that is located in a foreign country, even if it is held at an affiliate of a United States bank or other financial institution. Do not report any account maintained with a branch, agency, or other office of a foreign bank of other institution that is located in the United States.

Military Banking Facility. Do not consider as an account in a foreign country, an account in an institution known as a "United States military banking facility" (or "United States military finance facility") operated by a United States financial institution designated by the United States Government to serve U.S. Government installations abroad, even if the United States military banking facility is located in a foreign Country, is not an account in a foreign country.

Financial Interest. A financial interest in a bank, securities, or other financial account in a foreign country means an interest described in one of the following three paragraphs:

1. A United States person has a financial interest in each account for which such person is the owner of record or has legal title, whether the account is maintained for his or her own benefit or for the benefit of others including non-United States persons.
2. A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is: (a) a person acting as an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person; (b) a corporation in which the United States person owns directly or indirectly more than 50 percent of the total value of shares of stock or more than 50 percent of the voting power for all shares of stock; (c) a partnership in which the United States person owns an interest in more than 50 percent of the profits (distributive share of income, taking into account any special allocation agreement) or more than 50 percent of the capital of the partnership; or (d) a trust in which the United States person either has a present beneficial interest, either directly or indirectly, in more than 50 percent of the assets or from which such person receives more than 50 percent of the current income.

3. A United States person has a financial interest in each bank, securities, or other financial account in a foreign country for which the owner of record or holder of legal title is a trust, or a person acting on behalf of a trust, that was established by such United States person and for which a trust protector has been appointed. A trust protector is a person who is responsible for monitoring the activities of a trustee, with the authority to influence the decisions of the trustee or to replace, or recommend the replacement of, the trustee.

Correspondent or "nostro" accounts (international interbank transfer accounts) maintained by banks that are used solely for the purpose of bank-to-bank settlement need

not be reported on this form, but are subject to other Bank Secrecy Act filing requirements. This exception is intended to encompass those accounts utilized for bank-to-bank settlement purposes only.

Signature or Other Authority Over an Account. A person has signature authority over an account if such person can control the disposition of money or other property in it by delivery of a document containing his or her signature (or his or her signature and that of one or more other persons) to the bank or other person with whom the account is maintained. Other authority exists in a person who can exercise comparable power over an account by communication with the bank or other person with whom the account is maintained, either directly or through an agent, nominee, attorney, or in some other capacity on behalf of the U.S. person, either orally or by some other means.

Filing Information—Do NOT file with your Federal Income Tax Return

When and where to file. This report must be filed on or before June 30 of the year following the calendar year reported. The report is required annually. File by mailing this report to the Department of the Treasury, Post Office Box 32621, Detroit, MI 48232-0621, or by hand-carrying it to any local office of the Internal Revenue Service for forwarding to the Department of the Treasury, Detroit, MI. Tax attaches are located in the U.S. embassies in some countries. A filer can receive instructions for verifying that a report has been filed by calling the Detroit Computing Center Hotline at 1-800-800-2877.

Extensions of time to file federal tax returns do not extend the time for filing this report. **There is no extension of time available for filing this report.** If a delinquent FBAR is filed, also attach a statement explaining the reason for the late filing. See “When and where to file” (above) for filing instructions.

An amendment of a previously filed FBAR is accomplished by checking the “Amended” box in the upper right hand corner of the first page of the form, making the needed additions or corrections, and then stapling it to a copy of the original form. Please also attach a statement explaining the changes. See “When and where to file” (above) for filing instructions.

Record Keeping Requirements. If this Report is required, certain records must be retained. Such records must contain the name in which each such account is maintained, the number or other designation of such account, the name and address of the foreign bank or other person with whom such account is maintained, the type of such account, and the maximum value of each account during the reporting period. Retaining filed copies of this report will help to meet these requirements. The records must be retained for a period of five years and must kept at all times available for inspection as provided by law.

Explanations for Specific Items

Part I

Item 1. The Report of Foreign Bank and Financial Accounts (FBAR) is an annual report. Enter the calendar year being reported.

Amendment of a previously filed FBAR is accomplished by checking the “Amended” box in the upper right hand corner of the first page of the form, making the needed additions and corrections, and then stapling it to a copy of the original report. See “When and where to file” (above) for filing instructions.

Item 2. Check the appropriate box describing the filer. A corporation which owns directly or indirectly more than a 50 percent interest in one or more other entities required to file this Report will be permitted to file a consolidated report on TD F 90-22.1, on behalf of itself and such other entities.

Check box “d” in Item 2 and complete Part V. Consolidated reports should be signed by an authorized official of the parent corporation. Trusts and other entities, including tax-exempt organizations, should check box “e” and describe the filer on the line following box “e.”

Item 3. A filer should provide the filer’s taxpayer identification number. Generally this is the filer’s U.S. social security number (SSN) or employer identification number (EIN). Numbers should be entered with no spaces, dashes, or other punctuation throughout this report. If the filer does not possess such U.S. identification, the filer should complete Item 4.

Item 4. Complete Item 4 only if the filer has no U.S. taxpayer identification number. Item 4 requires the filer to provide the information about an official foreign government document evidencing the filer’s nationality or residence. The filer should write in the document number followed by the country of issuance. The filer may check off the type of document. If “other” is checked, the filer should write in the type of document. For example, an individual who is not a U.S. citizen would provide a passport number, the name of the country of issuance, and check off “passport.”

Item 5. Enter the date of birth of the filer using the month, day, and year convention.

Items 6, 7 and 8. Enter the name of the filer. An organization should enter its name in the Last Name space.

Items 9, 10, 11, 12 and 13. Enter the address of the filer. An individual filer residing in the United States should enter the street address of filer’s United States residence, not a post office box. An individual filer residing outside the United States should enter the filer’s United States mailing address. If the filer has no U.S. mailing address the filer may provide a foreign address. An organization should enter its United States mailing address.

Item 14. If the filer has a financial interest in 25 or more foreign financial accounts, the filer should check the yes box, sign and date the report (Items 44, 45 and 46) and leave blank Part II (Continuation of Separate Accounts) or Part III (Joint Accounts) of the report. If the group of entities covered by a consolidated report has a financial interest in 25 or more foreign financial accounts, the reporting parent corporation need only complete Part V (for consolidated reporting) Items 34 through 42, for the identity information of the account owners, but need not complete the account information. Detailed information about each account, including all information called for on this report, must be recorded and retained for five years from June 30 of the year following the calendar year reported. Any person who reports 25 or more foreign financial accounts must provide all the information omitted from Part II, III or V as appropriate.

Part II

Item 15. Provide the maximum value of the account during the calendar year being reported. The maximum value of an account is the largest amount of currency or non-monetary assets that appear on any quarterly or more frequent account statement issued for the applicable year. If periodic account statements are not issued, the maximum account asset value is the largest amount of currency and non-monetary assets in the account at any time during the year. Convert foreign currency by using the official exchange rate at the end of the year. In valuing currency of a country that uses multiple

exchange rates, use the rate which would apply if the currency in the account were converted into United States dollars at the close of the calendar year. The value of stock, other securities, or other non-monetary assets in an account reported on TD F 90-22.1 is the fair market value at the end of the calendar year or, if withdrawn from the account, at the time of the withdrawal. For purposes of Item 15, if the filer had a financial interest in more than one account, each account is to be valued separately in accordance with the foregoing two paragraphs. If the filer had a financial interest in one or more but fewer than 25 accounts, and is unable to determine whether the maximum value of these accounts exceeded \$10,000 at any time during the year, complete Part II, III, or V for each of these accounts and enter "value unknown" in Item 15 for these accounts.

Item 16. Indicate the type of account. If "Other" is selected describe the account.

Item 17. Provide the name of the financial institution with which the account is held.

Item 18. Provide the account number which the financial institution uses to designate the account.

Item 19—23. Provide the complete mailing address of the financial institution where the account is located. If the foreign state or postal code is not known leave them blank.

Part III

Item 24. Enter the number of joint owners for the account. If the exact number is not known, provide an estimate. In determining the number of joint owners, the filer is not counted.

Items 25—33. Enter this identity information about the joint owner. If there is more than one joint owner, enter the identity information about the principal joint owner. The filer may leave blank items for which no information is available. A spouse having a joint financial interest in an account with the filing spouse should be included as a joint account owner in Part III of this report. The filer should write (spouse) on Line 26 after the last name of the joint spousal owner. If the only reportable accounts of the filer's spouse are those reported as joint accounts, the filer's spouse need not file a separate report. If the accounts are owned jointly by both spouses, the filer's spouse should also sign the report. See the instructions for Item 44. If the filer's spouse has a financial interest in other accounts that are not jointly owned with the filer or has signature or other authority over other accounts, the filer's spouse should file a separate report for all accounts including those owned jointly with the other spouse.

Part IV—No Financial Interest in Account

Items 34-42. You must provide the name, address, and identifying number of the owner of a foreign financial account over which you had signature or other authority but no

financial interest in the account. If there is more than one owner of the account over which you have authority, provide the information in Items 34-43 for the primary owner for which you have authority. If you complete the account information for more than one account of the same owner, you need identify the owner only once. Write "Same Owner" in Item 34 for the succeeding accounts of the same owner.

Item 43. Enter filer's title for the position which gives him authority over the account.

Part V—Consolidated Report for Corporate Parent & Subsidiary Corporations

A corporation which owns directly or indirectly more than a 50 percent interest in one or more other entities required to file this report will be permitted to file a consolidated report on TD F 90-22.1, on behalf of itself and such other entities. Check box "d" in Item 2 in Part I and complete Part V.

Items 34—42. You must provide the corporate name, identifying number and address of the owner of the foreign financial account as shown on the books of the financial institution.

If you complete the account information for more than one account of the same owner you need identify the owner only once. Write "Same Owner" in Item 34 for the succeeding accounts of the same owner.

Signatures

This report must be signed by the person named in Part I. If the report is being filed on behalf of a partnership, corporation, fiduciary or other legal entity, it must be signed by an authorized individual. Consolidated reports should be signed by an authorized official of the parent corporation. Enter the title of the individual signing for a legal entity, such as a corporation, which is shown as the filer. A spouse included as a joint owner, who elects not to file a separate report in accordance with the instructions in Part III, must also sign this report. See the instructions for Part III.

Enter the title of the individual signing for a legal entity, such as a corporation, which is shown as the filer. Leave "Filer's Title" blank if the filer is only reporting as an individual. An individual filing because of a financial interest in his individual accounts is filing as an individual. An individual filing because of signature or other authority over a foreign financial account is filing as an individual. If the filer only has signature authority over the account, he should enter his title in Part IV Item 43, Filer's Title with this Owner, to show his relationship to the account. Enter the actual date signed.



Part 9. Criminal Investigation
Chapter 5. Investigate Process
Section 11. Other Investigations (Cont. 1)

9.5.11.9 (09-09-2004)
Voluntary Disclosure Practice

1. It is currently the practice of the IRS that a voluntary disclosure will be considered along with all other factors in the investigation in determining whether criminal prosecution will be recommended. This voluntary disclosure practice creates no substantive or procedural rights for taxpayers as it is simply a matter of internal IRS practice, provided solely for guidance to IRS personnel. Taxpayers cannot rely on the fact that other similarly situated taxpayers may not have been recommended for criminal prosecution.
2. A voluntary disclosure will not automatically guarantee immunity from prosecution; however, a voluntary disclosure may result in prosecution not being recommended. This practice does not apply to taxpayers with **illegal source income**.
3. A voluntary disclosure occurs when the communication is truthful, timely, complete, and when:
 - A. A taxpayer shows a willingness to cooperate (and does in fact cooperate) with the IRS in determining his/her correct tax liability.
 - B. The taxpayer makes good faith arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable.
4. A disclosure is timely if it is received before:
 - A. 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.
 - B. The IRS has received information from a third party (e.g., informant, other governmental agency, or the media) alerting the IRS to the specific taxpayer's noncompliance.
 - C. The IRS has initiated a civil examination or criminal investigation which is directly related to the specific liability of the taxpayer.
 - D. The IRS has acquired information directly related to the specific liability of the taxpayer from a criminal enforcement action (e.g., search warrant, grand jury subpoena).
5. Special agents are encouraged to consult their Criminal Tax (CT) Counsel attorney on voluntary disclosure issues.
6. Examples of voluntary disclosures include:
 - A. A letter from an attorney which encloses amended returns from a client which are complete and accurate (reporting legal source income omitted from the original returns), which offers to pay the tax, interest, and any penalties determined by the IRS to be applicable in full and which meets the timeliness standard set forth above. This is a voluntary disclosure because all of the elements set forth in (3) above, have been met.
 - B. A disclosure made by a taxpayer of omitted income facilitated through a barter exchange after the IRS has announced that it has begun a civil compliance project targeting barter exchanges but before it has commenced an examination or investigation of the taxpayer or notified the taxpayer of its intention to do so. In addition, the taxpayer files complete and accurate amended returns and makes arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable. This is a voluntary disclosure because the civil compliance project involving barter exchanges does not yet directly relate to the specific liability of the taxpayer and because all of the elements set forth in (3), above have been met.
 - C. A disclosure made by a taxpayer of omitted income facilitated through a widely promoted scheme that is the subject of an IRS civil compliance project. Although the IRS already obtained information which might lead to an examination of the taxpayer, it not yet commenced any such examination or investigation or notified the taxpayer of its intent to do so. In addition, the taxpayer files complete and accurate returns and makes arrangements with the IRS to pay in full, the tax, interest, and any penalties determined by the IRS to be applicable. This is a voluntary disclosure because the civil compliance project involving the scheme does not yet directly relate to the specific liability of the taxpayer and because all of the elements set forth in (3), above have been met.
 - D. A disclosure made by an individual who has not filed tax returns after the individual has received a notice stating that the IRS has no record of receiving a return for a particular year and inquiring into whether the taxpayer filed a return for that year. The individual files complete and accurate returns and makes arrangements with the IRS to pay, in full, the tax, interest, and any penalties determined by the IRS to be applicable . This is a voluntary disclosure because the IRS has not

yet commenced an examination or investigation of the taxpayer or notified the taxpayer of its intent to do so and because all of the elements set forth in (3), above have been met.

7. Examples of what are not voluntary disclosures include:
 - A. A letter from an attorney stating his/her client, who wishes to remain anonymous, wants to resolve his/her tax liability. This is not a voluntary disclosure until the identity of the taxpayer is disclosed and all of the elements of (3) above have been met.
 - B. A disclosure made by a taxpayer who is under grand jury investigation. This is not a voluntary disclosure because the taxpayer is already under criminal investigation. The conclusion would be the same whether or not the taxpayer knew of the grand jury investigation.
 - C. A disclosure made by a taxpayer, who is not currently under examination or investigation, of omitted gross receipts from a partnership, whose partner is already under investigation for omitted income that was skimmed from the partnership. This is not a voluntary disclosure because the IRS has already initiated an investigation which is directly related to the specific liability of this taxpayer. The conclusion would be the same whether or not the taxpayer knew of the ongoing investigation.
 - D. A disclosure made by a taxpayer, who is not currently under examination or investigation, of omitted constructive dividends received from a corporation which is currently under examination. This is not a voluntary disclosure because the IRS has already initiated an examination which is directly related to the specific liability of this taxpayer. The conclusion would be the same whether or not the taxpayer knew of the ongoing examination.
 - E. A disclosure made by a taxpayer after an employee has contacted the IRS regarding the taxpayer's double set of books. This is not a voluntary disclosure even if no examination or investigation has commenced because the IRS has already been informed by the third party of the specific taxpayer's noncompliance. The conclusion would be the same whether or not the taxpayer knew of the informant's contact with the IRS.
8. Pattern Letter 2527(P), is a letter that may be used to respond to a situation where a taxpayer's representative forwards a letter with payment from an anonymous taxpayer. See Document Manager for Pattern Letter 2527(P).

9.5.11.9.1 (09-09-2004)

Voluntary Disclosure Protocols

1. All voluntary disclosures must meet the requirements contained in subsection 9.5.11.9 above. The voluntary disclosure practice does not specify any particular format for voluntary disclosure communications so long as these requirements are met. The taxpayer or their representative may provide information either verbally or in writing.
2. Whether or not a communication is a voluntary disclosure can only be determined by examining the facts and circumstances of each investigation. When responding to inquiries, employees will refrain from offering opinions or discussing hypothetical investigations with anonymous taxpayers or their representatives.



DEPUTY COMMISSIONER

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

March 23, 2009

MEMORANDUM FOR COMMISSIONER, LARGE AND MID-SIZE BUSINESS
DIVISION
COMMISSIONER, SMALL BUSINESS/SELF-EMPLOYED
DIVISION

FROM: Linda E. Stiff 
Deputy Commissioner for Services and Enforcement

SUBJECT: Authorization to Apply Penalty Framework to Voluntary
Disclosure Requests Regarding Unreported Offshore Accounts
and Entities

The purpose of this memorandum is to set forth a penalty framework to be applied to voluntary disclosure requests containing offshore issues. The outlined framework will be applied to all such requests that have been submitted to the IRS and are not yet resolved, and will remain in effect for six months from the date of this memorandum. All voluntary disclosure requests are mandatory work.

As Criminal Investigation (CI) makes preliminary determinations that taxpayers are eligible to make voluntary disclosures, it will forward voluntary disclosure requests with offshore implications to the Philadelphia Offshore Identification Unit (POIU) for civil processing. Those requests will be distributed to and worked by examiners who specialize in offshore examinations. All resulting closing agreements will be reviewed and executed as prescribed by existing delegation orders.

Effective as of the date of this memorandum, you are authorized to execute agreements to resolve the tax liabilities related to offshore issues of taxpayers who make voluntary disclosure requests in the following manner:

- (1) Assess all taxes and interest due going back six years (exception: where an account/entity was formed or acquired within the six year look back period, taxes and interest will be assessed starting with the earliest year in which an account was opened/acquired or entity formed). Require the taxpayer to file or amend all returns, including information returns and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR".

(2) Assess either an accuracy or delinquency penalty on all years (no reasonable cause exception may be applied), and

(3) In lieu of all other penalties that may apply, including FBAR and information return penalties, assess a penalty equal to 20% of the amount in foreign bank accounts/entities in the year with the highest aggregate account/asset value.

If, (a) the taxpayer did not open or cause any accounts to be opened or entities formed, (b) there has been no activity in any account or entity (no deposits, withdrawals, etc.) during the period the account/entity was controlled by the taxpayer, and (c) all applicable U.S. taxes have been paid on the funds in the accounts/entities (where only account/entity earnings have escaped U.S. taxation), then the penalty in (3) is reduced to 5%.

The terms outlined herein are only applicable to taxpayers that make voluntary disclosure requests, and who fully cooperate with the IRS, both civilly and criminally.

cc: Acting Chief Counsel
Senior Advisor to the Commissioner
Commissioner, Tax Exempt and Government Entities
Chief, Criminal Investigation



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

Small Business/Self-Employed Division
Large and Mid-Size Business Division
Criminal Investigation Division

March 23, 2009

MEMORANDUM FOR SBSE EXAMINATION AREA DIRECTORS
LMSB INDUSTRY DIRECTORS
CI DIRECTORS OF FIELD OPERATIONS

FROM:

Faris R. Fink *Faris R. Fink*
Deputy Commissioner, SBSE

Barry B. Shott *Barry B. Shott*
Deputy Commissioner, LMSB International

Victor Song *Victor B. Song*
Deputy Chief, Criminal Investigation

SUBJECT:

Routing of Voluntary Disclosure Cases

The purpose of this memorandum is to alert you to a change in the processing of voluntary disclosure requests containing offshore issues. All voluntary disclosure requests are mandatory work.

All incoming voluntary disclosure requests will continue to initially be screened by Criminal Investigation (CI) to determine if the taxpayer is eligible to make a voluntary disclosure. Refer to IRM 9.5.11.9 for questions pertaining to taxpayer eligibility. For voluntary disclosure requests containing only domestic issues, where CI has preliminarily determined taxpayer eligibility, CI will continue to forward those requests to the appropriate Area/Industry PSP for civil processing.

Effective as of the date of this memorandum, voluntary disclosure requests containing offshore issues, where CI has preliminarily determined taxpayer eligibility, will now be forwarded by CI to the Philadelphia Offshore Identification Unit (POIU) for civil processing. Additionally, any voluntary disclosures with offshore issues that are currently in Area/Industry case inventories (whether or not there has been prior taxpayer contact by SBSE or LMSB) should also be forwarded to the POIU.



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

Small Business/Self-Employed Division
Large and Mid-Size Business Division

March 23, 2009

MEMORANDUM FOR SBSE EXAMINATION AREA DIRECTORS
LMSB INDUSTRY DIRECTORS

FROM:

Faris R. Fink 
Deputy Commissioner, SBSE

Barry B. Shott 
Deputy Commissioner, LMSB International

SUBJECT:

Emphasis on and Proper Development of Offshore Examination
Cases, Managerial Review, and Revocation of Last Chance
Compliance Initiative

The purpose of this memorandum is to ensure examinations with offshore transactions and/or entities continue to be emphasized and receive priority treatment during the examination process. This memorandum also provides for managerial oversight of offshore cases, and revokes the Last Chance Compliance Initiative.

Offshore Case Development

The IRS Strategic Plan for 2009-2013 outlines the Service's commitment to meet the challenges of international tax administration and of allocating compliance resources to target existing and emerging high-risk areas. Similarly, both the SBSE Examination Program Letter and the Servicewide Approach to International Tax Administration documents address our continuing commitment to prioritize and investigate abusive offshore transactions designed to defeat our tax system.

Offshore cases sent to the field are work of the highest priority. Examiners should utilize the full range of information gathering tools in properly developing offshore issues, with special emphasis on detecting unreported income. This includes interviewing taxpayers, making third party contacts, and timely issuing summonses to taxpayers and third parties. In particular, examiners should request foreign-based information through exchange of information under applicable treaties and tax

information exchange agreements (TIEAs) in any cases where the taxpayers have accounts or transactions in countries with such agreements. Examiners should be alert to the badges of fraud and consult with Fraud Technical Advisors in developing cases for criminal referrals or the assertion of the civil fraud penalty. Counsel is available to assist SBSE and LMSB personnel as needed. Attachment 1 contains a brief summary of potential foreign information reporting requirements and civil penalties that could apply to a taxpayer depending on his/her particular facts and circumstances.

Managerial Oversight

Managers should ensure that income and penalty considerations are sufficiently developed and documented during both unagreed and Embedded Quality reviews. Cases should be discussed with employees regarding the need for additional income probes, use of indirect methods of proof to reconstruct income, penalty development and/or other considerations as necessary.

Revocation of Last Chance Compliance Initiative

Effective as of the date of this memorandum, the Service will no longer afford taxpayers the opportunity to minimize their exposure to penalties through the terms of the Last Chance Compliance Initiative (LCCI). All notices and letters with respect to the LCCI and relevant portions of IRM sections 4.26.16, 4.26.17 and 25.6.23 are in the process of being obsoleted. On any currently open examinations where the LCCI terms have already been offered, taxpayers will be afforded the opportunity to resolve their cases under LCCI if they respond to the examiner within 15 days of their prior notification.

If you have questions, members of your staff may contact Karen Warfel, SBSE Offshore Program Manager at _____, Frank Bucci, SBSE Offshore Technical Advisor _____ or Lori Nichols, LMSB Director, International Compliance Strategy and Policy at _____.

Attachment

Attachment 1

The following summary of potential reporting requirements and civil penalties is not necessarily all encompassing, and it is unlikely that any one taxpayer would be subject to all of the reporting obligations or penalties listed below:

(1) Penalties for failure to comply with the Bank Secrecy Act requirement that United States persons report their financial interest in, or authority over, financial accounts located in a foreign country.

U S citizens, residents, and certain other persons, must annually report their financial interest in, or signature authority (or other authority that is comparable to signature authority) over, a financial account (such as a bank or investment account) that is maintained with a financial institution located in a foreign country if, for any calendar year, the aggregate value of all foreign accounts exceeded \$10,000 at any time during the year. This reporting requirement is met by filing Form TD F 90-22.1 (Report of Foreign Bank and Financial Accounts, commonly known as an "FBAR"). FBARs are filed with a Department of the Treasury facility located in Detroit and are not to be filed with tax returns; the filing date for FBARs is June 30th. The requirement to file FBARs is in the regulations under 31 U.S.C. § 5314 (which is a provision of the Bank Secrecy Act). Generally, the civil penalty for willfully failing to file an FBAR can be as high as the greater of \$100,000 or 50 percent of the total balance of the foreign account. Criminal penalties may also apply. Refer to IRM 4.26.16.4 for additional FBAR penalty considerations.

(2) Fraud Penalties (Sections 6651(f) and 6663):

Where an underpayment of tax, or a failure to file a tax return, is due to fraud, the taxpayer is liable for penalties that, although calculated differently, essentially amount to 75 percent of the unpaid tax.

(3) Failure to File Tax Return (Section 6651):

When a taxpayer is required to file a tax return and does not do so on or before the due date of the return, Section 6651(a)(1) imposes a penalty of 5 percent of the net tax amount required to be shown on the tax return for each month (or fraction of a month) that the return is late. The maximum penalty is 25 percent. This penalty is increased to 15%, with a maximum of 75%, if the taxpayer's failure to file is fraudulent.

(4) Failure to Pay Tax Penalties (Sections 6651(a)(2) and 6651(a)(3)):

When a taxpayer fails to timely pay the amount of tax shown on the return, Section 6651(a)(2) imposes a late payment penalty equal to .5 percent of the late payment for

each month (or part of a month) that the payment is late. The maximum penalty is 25 percent.

When a taxpayer fails to pay a tax that is required to be (but was not) shown on a return within 21 days after the date of the Service's notice and demand for that tax, Section 6651(a)(3) imposes a penalty of .5 percent for each month (or part thereof) that the assessment remains unpaid. The maximum penalty is 25 percent.

(5) Accuracy- Related Penalty (Section 6662):

The accuracy-related penalty for underpayments is imposed at the rate of 20 percent on the portion of any underpayment of tax required to be shown on a return attributable to negligence, a substantial understatement of tax, a substantial overstatement of pension liabilities or a substantial estate or gift tax valuation understatement. The accuracy-related penalty with respect to a substantial valuation misstatement can be as high as 40 percent.

(6) Penalties for failure to file certain information returns (Sections 6035, 6038, 6038A, 6038B, 6038C, 6039F, 6046, 6046A, and 6048):

Form 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations. U.S. persons who are officers, directors, or shareholders in certain foreign corporations (including, for example, an International Business Corporation used in an offshore scheme) report information required by Sections **6035, 6038, and 6046**, and compute income from controlled foreign corporations under Sections 951–964. 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.

Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Reports 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 as required by Sections **6038A and 6038C**. 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.

Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation. Reports transfers of property to a foreign corporation and to report information under Section **6038B**. The penalty for failing to file each one of these information returns is ten percent 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.

Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts. Reports various transactions involving foreign trusts, including creation of a foreign trust by a U.S. person, transfers of property from a U.S. person to a foreign trust, and receipt of distributions from foreign trusts under Section **6048**. This return also reports the receipt of gifts from foreign entities under Section **6039F**. The penalty for failing to file each one of these information returns, or for filing an incomplete return, is 35 percent of the gross reportable amount, except for returns reporting gifts, where the penalty is five percent of the gift per month, up to a maximum penalty of 25 percent of the gift.

Form 3520-A, Annual Information Return of Foreign Trust with a U.S. Owner. Reports ownership interests in foreign trusts, by U.S. persons with various interests in and powers over such trusts under Section **6048(b)**. The penalty for failing to file each one of these information returns, or for filing an incomplete return, is five percent of the gross value of trust assets determined to be owned by the U.S. person.

Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships. U.S. persons with certain interests in foreign partnerships use this form to report interests in *and transactions of the foreign partnerships, transfers of property to the foreign partnerships, and acquisitions, dispositions, and changes in foreign partnership interests* under Sections **6038, 6038B, and 6046A**. Penalties include \$10,000 for failure to file each return, 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, and ten percent of the value of any transferred property that is not reported, subject to a \$100,000 limit.

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Katten Muchin Rosenman LLP Locations

Chicago

525 W. Monroe Street
Chicago, IL 60661-3693
312.902.5200 tel
312.902.1061 fax

Los Angeles

2029 Century Park East
Suite 2600
Los Angeles, CA 90067-3012
310.788.4400 tel
310.788.4471 fax

London

1-3 Frederick's Place
Old Jewry
London EC2R 8AE
+44.20.7776.7620 tel
+44.20.7776.7621 fax

Palo Alto

200 Page Mill Road
Suite 450
Palo Alto, CA 94306-2060
650.330.3652 tel
650.321.4746 fax

New York

575 Madison Avenue
New York, NY 10022-2585
212.940.8800 tel
212.940.8776 fax

Washington, D.C.

2900 K Street, NW
Suite 200
Washington, DC 20007-5118
202.625.3500 tel
202.298.7570 fax

Charlotte

401 S. Tryon Street
Suite 2600
Charlotte, NC 28202-1935
704.444.2000 tel
704.444.2050 fax

Irving

5215 N. O'Connor Boulevard
Suite 200
Irving, TX 75039-3732
972.868.9058 tel
972.868.9068 fax

www.kattenlaw.com