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## Authors

**Charles K. Kolstad**  
[ckkolstad@Venable.com](mailto:ckkolstad@Venable.com)  
310.229.9954

**Michael D. Foster**  
[mfoster@Venable.com](mailto:mfoster@Venable.com)  
310.229.9939

## 2010 Tax Filing Season – International Information Reporting Requirements for CPAs to Remember

The 2010 tax filing season is rapidly approaching, and this is a good time to recall all of the international information returns that your clients with international interests or operations may have to file. The IRS has increased its scrutiny of businesses with international operations – witness the recent change in name from the Large and Mid Size Business Division to the Large Business and International Division. In addition, the IRS has established a specialized group of auditors to focus on high net-worth individuals, with a significant focus on international reporting and compliance.

There are significant penalties for failure to file the appropriate international information returns. While the IRS may have taken a more lenient position on the application and collection of penalties in the past, that has changed. Since the penalties range from \$10,000 per late form, to up to 50% of the highest balance during the taxable year in the case of foreign bank accounts, and to 10% of the fair market value of property transferred to a foreign corporation or partnership, the amounts due can add up very quickly. While many of the returns have a reasonable cause exception to avoid the penalties, in our experience the IRS has become much more restrictive in granting a reasonable cause exception. In addition, in certain cases there are criminal penalties for failure to file the required forms. Lastly, failure to file a required return, or filing what the IRS views as an incomplete return, could result in the statute of limitations not starting, and thus never expiring.

In our experience, taxpayers frequently miss reporting their investments in foreign corporations, partnership and disregarded entities, which have foreign bank accounts. This results in failure to file two separate information reporting forms, with two separate sets of penalties.

In addition, the IRS has expanded their scrutiny of tax return preparers looking at their client's compliance in this area. So, this is a good time to review your client information questionnaire and client engagement/transmittal letters to ensure that you have asked your clients to tell you about all of their international operations, overseas vacation homes, and foreign accounts (bank, securities, mutual funds, etc). Doing so will protect you in the event that a client does not tell you about all of their international operations.

The following is a summary of the international information returns that your clients may be required to file or collect:

- **Form 90-22.1** – filed if the aggregate of reportable foreign financial accounts exceeds \$10,000. This is a U.S. Treasury Department form due by June 30, 2010, with no extensions; it is not filed with the tax return.
- **Form 926** – filed if a U.S. taxpayer transfers property to a foreign corporation.
- **Form 3520 and 3520-A** – filed if a U.S. taxpayer is a grantor with respect to a foreign trust, or a beneficiary receiving distributions from a foreign trust or bequests from a foreign decedent. This form is filed separately from the tax return.
- **Form 5471** – filed if a U.S. taxpayer (individual, corporate or partnership) owns 10% or more of the stock of a foreign corporation. Due with the tax return (including extensions).
- **Form 5472** – filed if a U.S. corporate taxpayer has a greater than 25% foreign shareholder. The IRS puts the burden on each U.S. corporate taxpayer to know who its shareholders are, and whether they are foreign. Due with the tax return (including extensions).
- **Form 8858** – filed if a U.S. taxpayer has an interest in a foreign entity which is classified as a disregarded entity for U.S. tax purposes. Due with the tax return (including extensions).
- **Form 8865** – filed if a U.S. taxpayer has a greater than 10% interest in a foreign entity which is classified as a partnership for U.S. tax purposes. Due with the tax return (including extensions).
- **Forms 1042-S** – filed if a U.S. taxpayer makes payments to foreign vendors or recipients of dividends, interest, rents, royalties, service fees, etc. to the extent that the payments are U.S. source income to the foreign recipient. Similar to, yet quite different from, Form 1099 in a domestic context. Due no later than March 15, 2010, with a short 30-day extension available upon request.

with copies sent to the income recipients and the IRS.

- **Forms W-8BEN, W-8ECI and W-9IMY** – these forms are not filed with the IRS, but must be collected from the foreign payee if your client is withholding tax at a rate of less than 30% due to a claim that the foreign payee is eligible for a reduced rate under an income tax treaty. Your client must have the appropriate form ON HAND when the payment is made to be able to withhold at the reduced rate. The IRS can collect any underwithheld tax from your client as the withholding agent.

The IRS established an amnesty program that expired October 15, 2009 for taxpayers who had not filed the Form 90-22.1 (although the program also covered taxpayers who failed to file certain other international information returns as well). Although the amnesty program has expired, the IRS has announced that it is considering another amnesty. In any event, the Voluntary Disclosure Program remains in place and is available for taxpayers who have failed to file all the required international information returns in prior tax years.

If you have questions on the requirement to file a particular form, on how to complete part or all of a particular form, or on the pros and cons of participating in the Voluntary Disclosure Program, please contact one of the authors or a member of the [Venable Tax Group](#).

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