

IRS Summarizes Reporting Requirements and Penalties for Dual Citizens Residing Outside the United States

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On December 7, 2011, the IRS released a Fact Sheet (which can be found [here](#)) summarizing the filing requirements for dual citizens of the United States and a foreign country, including federal income tax return and Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (“FBAR”). The Fact Sheet also discusses the various penalties imposed on those who fail to meet such filing requirements. However, the IRS provides a general overview for dual citizens, specifying that penalties will not be imposed on those that have failed to meet the reporting requirements in all circumstances. In certain circumstances, a dual citizen may be able to avoid the imposition of the failure to pay and failure to file penalties. Most importantly, the penalty for failure to file the FBAR may not be imposed if the IRS determines that the failure to file the FBAR was due to reasonable cause.

Although throughout the Fact Sheet, the IRS uses the term “dual citizen,” this is not 100% accurate. These requirements apply to any foreign person who is a citizen of a foreign country and is either a resident or citizen of the United States. A foreign individual will be deemed a United States citizen resident by meeting the number of days test or obtaining a green card. For purposes of this Practice Update and consistency with the Fact Sheet, we have used the term “dual citizen” throughout.

Dual citizens are required to file a federal income tax return for any tax year in which their gross income is equal to or greater than the standard deduction or relevant exemptions. Gross income includes worldwide income from all sources, even sources outside the United States. Thus, a dual citizen must report all income, regardless of whether the income originated from a foreign source or United States source. Failure to report such worldwide income results in noncompliance with United States income tax rules.

In addition to the requirement to file an income tax return and report worldwide income, a dual citizen is required to pay income taxes on such income. Income tax may be paid traditionally by a payment to the IRS or, if applicable, the recognition of foreign tax credit. Failure to pay the income tax due will result in penalties and noncompliance.

Finally, dual citizens are required to report their foreign assets including, but not limited to, their interest in foreign financial accounts. The interest in a foreign financial account is reported on the FBAR. Failure to

file an FBAR can result in steep penalty, irrespective of the reason for not filing.

Additionally, in 2012, a portion of Foreign Account Tax Compliance Act ("FATCA") comes into effect. Under this guidance, certain taxpayers who have an interest in certain specified financial assets will be required to report those assets to the IRS. This filing requirement, with certain exceptions, is in addition to the FBAR filing requirement discussed above. For more detailed information on this new requirement, see our Practice Update - "Your Assets Exposed! What the United States is doing to make you completely Bare."

If you believe you have not complied with the three (3) main requirements listed above, we urge you to contact us immediately to determine your best course of action.

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