

Tax Letter

Foreign Accounts and Foreign Financial Assets Reporting

For good many years, US persons are required to make annual reports regarding their foreign accounts directly to the US Treasury Department (not the IRS). Foreign accounts, generally include all foreign bank accounts, investment accounts, etc. The reporting threshold is \$10,000 or more in aggregate value of all foreign accounts during a year. The Form for this reporting is TDF 90-22.1, and the annual reporting deadline is June 30 of every year. Penalty for failure to file this report annually could be as high as 50% of the annual aggregate value of all foreign accounts for the year of non compliance.

In 2010, a new law (Public Law #111-147) known as the HIRE Act (aka the Job Bill) was passed by both the Senate and the House and was signed by President Obama on 3-18-2010. Although the new law is known either as the HIRE Act or the Job Bill, it contained a Foreign Financial Assets reporting requirement to be implemented beginning 2011. Therefore, 2012 is the first year that all US persons must file a report regarding ownership interest in foreign financial assets held in the prior year (2011).

However, this new law does not change the reporting requirement under the old law regarding Foreign Accounts reporting (Form TDF 90-22.1), therefore all US persons in 2012 must comply with both the Foreign Accounts reporting and the Foreign Financial Assets reporting requirements in the same year. One of the reports (TDF 90-22.1) should be filed directly to the Treasury Department same as in the past, and the other report (Form 8938) should be filed directly to the IRS with your 2012 income tax returns.

Relatively speaking, it is easier to understand what are Foreign Accounts. It is much more difficult to comprehend what are interest in Foreign Financial Assets. Under the new law, interest in Foreign Financial Assets is defined as interest held directly and/or indirectly by any US persons in “Specified Foreign Financial Assets”.

“Specified Foreign Financial Assets” are:

- (1) Depository or custodial accounts in any foreign financial institutions,

(2) Any foreign financial interests held for investment but not held in accounts maintained by financial institutions, for example (a) stocks, securities or debts issued or owed by foreign person(s), and/or (b) any other financial instruments or contracts held by US person which were issued by non US person(s); and

(3) Interest in any foreign entities. The “foreign entity” may be in the form of a corporation, partnership, joint venture, co-ownership and/or sole ownership, etc.

For the time being (2012), the thresholds for Foreign Financial Assets reporting are as follows:

- (1) Maximum combine aggregate value at any time during a reporting year for married filing jointly will be more than \$150,000. For single filer will be more than \$75,000; or
- (2) Combine aggregate value at the end of a reporting year for married filing jointly will be more than \$100,000. For single filer will be more than \$50,000.

To be exempt from this new reporting, an US person must fail to meet both reporting thresholds.

At the time of this writing, somehow the IRS failed to issue the regulation(s) regarding “specified US Domestic Entities”. Therefore, until the IRS decided to issue such regulation(s), only individuals and individual owners of disregarded entities must file this report (Form 8938) in 2012 for 2011.

Last but not least, Form 8938 also requires the reporting of any income earned from or attributable to the specified assets reported on the Form.

Any questions and follow-up discussions concerning this matter please give us a call at 415-381-0681 or visit us at our web site: chochan.com.

Sincerely

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