Have a Yen for Overseas Investing? Don't Forget to Report Your Accounts

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The proliferation of global investing has prompted many U.S. investors to allocate a considerable portion of their wealth overseas. As interest rates and investment returns have been somewhat tepid in the United States, investors are flocking to foreign bank and brokerage accounts to earn a better return on their investments. Many people are surprised to find out about the confusing financial regulations associated with such foreign investments.

The Bank Secrecy Act requires U.S. citizens, residents and certain entities to file an annual Report of Foreign Bank and Financial Accounts (FBAR) form to the IRS if certain threshold requirements are met. Generally, you must file this FBAR if you had a financial interest in, or signature authority over, at least one financial account outside the U.S. and the aggregate value of all foreign accounts exceeded $10,000 at any time during the calendar year. The FBAR is due by June 30 of the year following the year in which the account holder meets the $10,000 threshold. It is important to note that an account holder may have an FBAR reporting obligation even though the account produces no taxable income. Additionally, an account holder will not be granted an FBAR filing extension even if he/she was granted a federal tax return extension.

The FBAR requirement is a regulatory device used by the U.S. government to identify persons who may be using foreign financial accounts to avoid U.S. regulations. As such, the penalties for non-compliance can be stiff. Failure to file an FBAR when required could result in civil penalties, criminal penalties or both. Additionally, civil penalties for FBAR violations can actually exceed the balance in the foreign financial account. Account holders are also required to maintain records on accounts reported under FBAR for at least five years or face civil and/or criminal penalties.

There are several FBAR filing exceptions for U.S. citizens and residents, including:

- IRA owners and beneficiaries
- Participants in and beneficiaries of tax-qualified retirement plans
- Trust beneficiaries
- Foreign financial accounts maintained on a U.S. military banking facility

Another piece of legislation has added even more regulatory complexity to offshore account reporting. The Foreign Account Tax Compliance Act (FATCA) was enacted in 2010 as part of the HIRE (Hiring Incentives to Restore Employment) Act. FATCA is similar to the FBAR but applies to a wider range of assets, such as investments in foreign hedge funds and private equity funds. This new legislative act imposes an asset disclosure threshold of $50,000 and FATCA disclosures must be filed as an attachment to one's individual tax return. Additionally, FATCA will require foreign financial institutions and non-financial institutions with substantial U.S. owners to disclose information regarding these taxpayers in 2013.

The regulatory landscape affecting foreign account reporting is indeed complex and requires special attention. As the requirements and penalties for non-compliance increase, it is important to consult with a CPA specializing in international taxation and regulation to fully understand your reporting requirements.

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