

PKF PERSPECTIVES

NEW INTERNATIONAL TAX COMPLIANCE REQUIREMENTS

The year 2010 saw the passage of many tax provisions which affect international taxpayers and transactions. Coupled with the reinforced IRS initiatives to combat perceived and actual tax avoidance, the year 2010 has become a turning point in international tax compliance requirements.

In March 2010, Congress passed the **Hiring Incentives to Restore Employment Act** ("HIRE Act") which contained new "offshore anti-abuse measures", designed for new levels of transparency and disclosure and authorizes stiffer penalties for taxpayers and tax practitioners.

The HIRE Act has raised the bar in many areas including the following.

Foreign Account Tax Reporting

New Code Sections 1471–1474 provide foreign financial institutions (FFIs) with a choice of:

- entering into agreements with the IRS to provide information about their account holders, **or**
- becoming subject to a 30 percent U.S. withholding tax on U.S. source payments to foreign financial institutions, foreign trusts or foreign corporations.

FFIs will be subject to the 30 percent withholding on income from U.S. financial assets unless they agree to disclose:

- (1) identity (the name, address and tax identification number) of any U.S. person,

- (2) the account number,
- (3) account balance or value, **and**
- (4) gross receipts and withdrawals from the account.

Section 1471 also authorizes the Treasury to require the FFI to comply with verification and due diligence proceeds to avoid withholding requirements.

As an alternative, the FFI can make an election to be subject to the same reporting requirements as U.S. financial institutions (Forms 1099, etc.).

These provisions are effective for payments made after December 31, 2012.

New Reporting Requirements for Individuals with Foreign Accounts

Under current law, every U.S. person who has a financial interest in, or signature or other authority over bank accounts, securities accounts or other financial accounts in foreign countries must report those accounts and relationships on a calendar year annual report if during any part of the year, the aggregate value exceeds \$10,000.

The report is made on Form TD 90-22.1– Report of Foreign Bank and Financial Accounts or FBAR.

Civil penalties for non-willful violations are up to \$10,000 per violation.

For willful violations, the civil penalties are up to the greater of \$100,000 or 50 percent of the account balance or value.

New Law –Section 6038D
Foreign Account Tax Compliance Act (FATCA)

Section 6038D imposes new reporting requirements on individuals who hold more than \$50,000 in

- (1) any financial account maintained by a foreign financial institution **or**
- (2) any foreign stock, interest in a foreign entity (including a foreign trust), or financial instrument with a foreign counterpart that is not held in a custodial account of a financial institution.

The penalty for failure to disclose such information, if applicable, would be \$10,000 with increases up to a total maximum penalty of \$50,000 if failure continues after notification.

The information is reported on the person's U.S. tax return (in addition to Form TD 90-22.1). The required information includes:

- (1) Name and address of foreign financial institution and number of account.
- (2) For a stock or security, the name and address of issuer and class of stock or security.
- (3) For other instruments, contracts or interests, information necessary to identify instrument, contract or interest; names and addresses of all issuers or counter parties.
- (4) Maximum value of the asset during the tax year.

Although the information is similar to the TD 90-22.1, it is not identical. The IRS will presume the foreign financial assets exceed \$50,000 if the individual has an interest in one or more specified foreign financial assets and such individual does not provide sufficient information to demonstrate the aggregate value of the assets.

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Taxpayers should be fully aware of their responsibilities in these areas and should seek professional assistance where needed. The IRS

has not been flexible in abating related penalties; therefore, competent advice is critical to avoid the imposition of penalties. In fact, in a recent speech at the Annual Institute on Current Issues in International Taxation, IRS Commissioner Doug Shulman said:

... One of the most important projects we are working on in the international area right now is the implementation of FATCA which was enacted this year as part of the HIRE Act. This is the most important development in international information reporting in a generation, and it is a big step forward in our efforts to combat tax evasion.

FATCA provides IRS with better transparency and additional tools that we need to crack down on Americans hiding assets overseas. FATCA will increase information reporting by U.S. taxpayers holding financial assets outside the United States and impose stiff penalties for failure to comply. It will also require reporting of U.S. persons who hold accounts in foreign financial institutions or who own large interests in foreign entities that hold such accounts.

I believe the mere enactment of FATCA should prompt preparers and advisors to expand their due diligence regarding the opening of offshore accounts by U.S. persons attempting to evade U.S. tax obligations. In other words, passage of FATCA makes the world a riskier place for U.S. taxpayers still trying to hide their money anywhere around the world....

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December 2010