



Are you invested overseas? Do you maintain any foreign bank accounts?

Recently there has been increased IRS focus on international issues, including ownership of offshore accounts. New legislation in the Education Jobs Act of 2010, the 2010 Health Care Act, and the Hiring Incentives to Restore Employment Act have added new reporting requirements, increased penalties for non-filing, and otherwise strengthened the government's attempts to collect information.

Foreign Bank Account Reports:

If you have a **financial interest that exceeds \$10,000** at any time during the year in a foreign bank or financial account, then you must file a report with the Treasury Department each year.

The term **"financial account"** includes any savings account, demand account, checking account, deposit, time deposit, debit card, prepaid credit card, securities, securities derivatives, insurance policies with cash values, and mutual funds held through a foreign brokerage account. (Mutual funds with foreign investments held through a U.S. brokerage are *not* included in this definition.)

The term **"financial interest"** includes a direct interest, where you have legal title, and indirect interests, where you are acting as an agent for another, including a corporation where you own more than 50% of the stock, a partnership where you own more than 50% of the profits or capital, or a trust where you own more than 50% of the assets or are allocated more than 50% of the trust income.

Penalties: Civil penalties for not filing the form, if the income generated by the account was not properly reported on your income tax return, are \$10,000 for each failure to file. If you deliberately fail to file, the penalty is the greater of \$100,000 or 50% of the value of the account at the time of the violation. Criminal penalties can carry up to 5 years in prison and a maximum fine of \$250,000.

New Tax Rules for Foreign Trusts

If you transfer assets to a foreign trust or receive a distribution from a foreign trust, you are required to file an information return to report the transaction and an information return to report ownership. (Note that this filing requirement even applies to grantor trusts.) The penalties for non-filing have been increased to a minimum of \$10,000 and can be up to 35% of the gross amount of the trust value.

Another new provision treats any personal use of the trust property after 3.18.2010 as a distribution, hence requiring the information return filing. (If you own real estate in Mexico, please contact us—real estate there is held under a Mexican residential trust, and therefore these information returns must be filed.)

New Disclosure Requirement for Foreign Financial Assets

Beyond the Foreign Bank Account Reporting, numerous additional reports are required to be filed with the IRS by U.S. persons engaged in foreign activities, directly or indirectly, through a foreign business entity. Please advise us if:

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- You are an officer, director, or shareholder of a foreign corporation;
- You are a partner in a foreign partnership
- You transfer money or property to a foreign corporation; or
- You are the owner of a foreign disregarded entity.

Beginning this year, investments in certain types of foreign accounts that exceed \$50,000 will be subject to an additional requirement to attach a disclosure statement to the applicable income tax return. Currently, we are awaiting regulations to give us more guidance on these requirements; we will be sure to keep you posted on further developments.

As always, please feel free to contact Jeff Spiegel, Joe Peterson, or Donna Stone if you have further questions regarding these issues.

Spiegel Accountancy Corp.
2033 North Main Street, Suite 365
Walnut Creek, CA 94596
(925) 977-4000 phone

jeff@spiegelcorp.com

joe@spiegelcorp.com

donna@spiegelcorp.com