

# Tax Alert

PI & CERELLI, GILSTEIN  
COMPANY, LLP

Certified Public Accountants and Consultants

**Foreign Bank Account Report Due June 30<sup>th</sup>**

**June, 2011**

## Do you have a foreign account that you are required to report?

If you are a United States person, who maintains one or more foreign accounts, and the aggregate value of those accounts exceeded \$10,000 at any time during the year, you may be required to report those accounts to the IRS. The due date for reporting foreign accounts is **June 30th**. If you feel you may fall into this category it is important that you contact us to discuss the details of your situation. The penalties for failing to report a foreign account include steep fines and possible criminal prosecution.

There are five factors to consider when determining whether you are required to report a foreign account. You must be:

- A United States person,
- Who has a financial interest in or authority over,
- Any financial account,
- In a foreign country,
- And the aggregate value of all of these accounts exceeded \$10,000 at any time during the year.

**United States Person.** A United States person is a citizen or resident of the United States, or an entity, including but limited to a corporation, partnership, trust or limited liability company, created, organized, or formed under the laws of the United States, any State, the District of Columbia, the Territories, and Insular Possessions of the United States or the Indian Tribes.

**Financial Interest or Authority.** A United States person has a financial interest in each account in a foreign country for which:

He is the owner of record or has legal title regardless of whether the account is maintained for his own benefit or for the benefit of others or,

The owner of record or holder of legal title of the foreign account is one of the following;

- An agent, nominee, attorney, or a person acting in some other capacity of behalf of the US person;
- A corporation, partnership, trust or any other entity in which the U.S. person holds more than a 50% interest.

A person has authority over an account if that person can control the disposition of money or other property in the account by delivery of a document containing his signature, or by any other sort of direct communication, to the bank or other person with whom the account is maintained.

**Financial Accounts.** Financial accounts include:

- Bank accounts such as savings accounts, checking accounts, and time deposits
- Securities accounts
- Mutual funds
- Any other accounts maintained in a foreign financial institution or with a person doing business as a foreign financial institution.

**Foreign Country.** Any place located outside of the United States, Northern Mariana Islands, District of Columbia, American Samoa, Guam, Puerto Rico, the US Virgin Islands, or the Trust Territories of the Pacific Islands.

**Aggregate Value.** If at any time during the year the aggregate value in all of the foreign accounts exceeded \$10,000 then each account must be reported. This is required regardless of how long the accounts exceeded \$10,000. Every individual account must be reported even if an account did not exceed \$10,000

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For example, say a person has two foreign accounts. One account holds \$5,000 and the other holds \$6,000. That person is required to report both accounts because the aggregate value exceeds \$10,000.

## What should you do if you have forgotten to report your foreign account?

If you have failed to report a foreign account, the IRS recently announced a new 2011 Voluntary Disclosure Initiative for taxpayers to disclose their unreported offshore accounts. To participate in this program, the taxpayer must file or amend their tax returns and Form TD F 90-22.1 for the years 2003 to 2010 and pay all delinquent taxes, interest and penalties by August 31, 2011. However, if circumstances arise that make meeting this deadline improbable, the taxpayer may be able to request a 90-day extension to apply to the program. In exchange for participating in this program, taxpayers can avoid criminal prosecution and may be subject to significantly reduced penalties.

Under the disclosure program, taxpayers are subject to a 25% penalty on the highest aggregate account balance between 2003 and 2010. If the value of the accounts was less than \$75,000 at all times during the tax year in question, the penalty is reduced to 12.5%. The taxpayer is also required to pay an accuracy-related penalty equal to 20% of the underpayment of tax.

The voluntary disclosure program may not be beneficial for everyone. The IRS recently released a statement indicating that taxpayers who operated in good faith, yet still failed to comply with the reporting requirements, would be able to opt out of the program and be subject to less civil penalties. The opportunity presented through the program needs to be balanced against civil and criminal penalties that might be faced if the taxpayer is detected on audit or otherwise.

The decision to enter into the voluntary disclosure program should first be discussed in detail with your tax advisor or attorney.

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