

# FOREIGN BANK AND FINANCIAL ACCOUNTS REPORTING (FBAR)

- *Reporting is required for U.S. citizens who has a financial interest in or signature authority over a foreign financial account, including a bank account, brokerage account, mutual fund, trust, or other type of foreign financial account.*
- *Required to report under FBAR*
  - *A citizen or resident of the U.S.*  
entities, including but not limited to,
  - Corporations, partnerships, or limited liability companies, created or organized in the United States or under the laws of the United States;
  - Trusts or estates formed under the laws of the United States

# REPORTABLE FOREIGN A/C – FBAR

- **Reportable foreign accounts includes**
  - *a financial interest in or signature authority over a foreign financial account,*
  - *A bank account, brokerage account, mutual fund, trust, or*
  - *other type of foreign financial account*

# NOT FOR FBAR

You do NOT require to report under FBAR

- United States persons included in a consolidated FBAR
- Correspondent/Nostro accounts
- Foreign financial accounts owned by a governmental entity
- Foreign financial accounts owned by an international financial institution
- Owners and beneficiaries of U.S. IRAs
- Participants in and beneficiaries of tax-qualified retirement plans
- Certain individuals with signature authority over, but no financial interest in, a foreign financial account
- Trust beneficiaries (but only if a U.S. person reports the account on an FBAR filed on behalf of the trust)
- Foreign financial accounts maintained on a United States military banking facility.

# IRS REPORTING

- Case 1:

When the aggregate value of all foreign financial accounts DOES NOT exceeded \$10,000 at any time during the calendar year

- Report it on Form 1040 Schedule B; Part III Foreign Accounts and Trusts information answer yes/no

# IRS REPORTING

- Case 2:  
When the aggregate value of all foreign financial accounts exceeded \$10,000 at any time during the calendar year, report it on
  - Form 1040 Schedule B and
  - FinCEN Report 114, *Report of Foreign Bank and Financial Accounts*
  - Currently this has to be done by e-filing before June 30

*(superseded TD F 90-22.1)*

# INCOME REPORTING

- Income from these accounts are taxable
- Ex. Interest income reported on Schedule B Part I Interest section or Part II dividends section
- Ex. Capital gains are reported on Schedule D

# PENALTIES FOR NON-COMPLIANCE

- Civil penalty not to exceed \$10,000 per incident for nonwillful violations that are not due to reasonable cause
- Greater of \$100,000 or 50% of the balance in the account at the time of the violation, for each violation, for willful violation

# **FOREIGN ACCOUNT TAX COMPLIANCE ACT (FACTA)**



# BACKGROUND - FACTA

- The Foreign Account Tax Compliance Act (FACTA) enacted in 2010 as part of the hiring incentives to restore employment (HIRE) act, is an important development in United States efforts to combat tax evasion by US persons holding investments in offshore accounts

# FOREIGN ACCOUNT TAX COMPLIANCE ACT (FACTA)

- *U.S. citizens, U.S. individual residents, and a very limited number of nonresident individuals who own certain foreign financial accounts or other offshore assets (specified foreign financial assets) must declare those assets to IRS*
- *Required to report under FACTA*
  - *a citizen or resident of the U.S. (including a green card holder)*
  - *a U.S. incorporated entity (including partnerships and trusts)*
  - *a non-U.S. incorporated entity having shareholding of 10 percent or more held by a U.S. citizen,*
  - *U.S. resident, individual with a U.S. mailing address, or*
  - *U.S. incorporated entity.*

# THE INDIAN GOVT. SIGNED TO COMPLY WITH FATCA

- The Indian Government signed an Inter Governmental Agreement (IGA) with the United States to implement FATCA on July 9, 2015.
- As a result Indian financial institutions requires to report the names, addresses, tax identification numbers, account numbers and account balances of each account holder that is a specified U.S. person to the U. S. Government/authority.

# **EXCHANGE OF INFORMATION BETWEEN INDIA AND THE USA- FATCA**

- Foreign Financial Institutions in India (FFI's) are required to report tax information about the U.S account holders to the Indian Government which will, in turn, relay that information to the IRS
- The U.S IRS will provide similar information about Indian citizens having any accounts or assets in the U.S to the Reserve Bank of India.
- This automatic exchange of information began on September 30, 2015

# REPORTABLE FOREIGN ASSETS - FACTA

- **Reportable foreign assets includes**
  - Financial (deposit and custodial) accounts held at foreign financial institutions
  - Foreign stock or securities held in a financial account at a foreign financial institution
  - Foreign stock or securities not held in a financial account
  - Foreign-issued life insurance or annuity contract with a cash-value

# REPORTABLE FOREIGN ASSETS - FACTA

- Foreign mutual funds
- Foreign partnership interests
- Foreign accounts and foreign non-account investment assets held by foreign or domestic grantor trust for which you are the grantor
- Foreign-issued life insurance or annuity contract with a cash-value
- Foreign hedge funds and foreign private equity funds

# NOT FOR FACTA

- You do NOT require to report under FACTA
  - Foreign real estate held directly
  - Personal property, held directly, such as art, antiques, jewelry, cars and other collectibles
  - Indirect interests in foreign financial assets through an entity
  - Financial account held at a foreign branch of a U.S. financial institution
  - Financial account held at a U.S. branch of a foreign financial institution

# THRESHOLD FOR REPORTABLE - FACTA

## Living in the U.S.

- Single >\$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year  
*(same for M.F separately)*
- M.F.J > \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.

## Living abroad

- Single >\$200,000 on the last day of the tax year or more than \$300,000 at any time during the tax year  
*(same for M.F separately)*
- M.F.J > \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year



# IRS REPORTING

- Use Form 8938 to report the information about certain foreign financial accounts and offshore assets
- Attach Form 8938 to their income tax return

## **Exemptions**

- Taxpayers who do not have to file an income tax return for the tax year do not have to file Form 8938, regardless of the value of their specified foreign financial assets

# PENALTIES FOR NON-COMPLIANCE

- \$10,000 for failure to report foreign financial assets on Form 8938
- Up to \$50,000 for continued failure after IRS notification
- underpayments of tax attributable to non-disclosed foreign financial assets are subject to an additional understatement penalty of 40 percent

# Questions

