# Did You Forget Your U.S. International Reporting Obligations?

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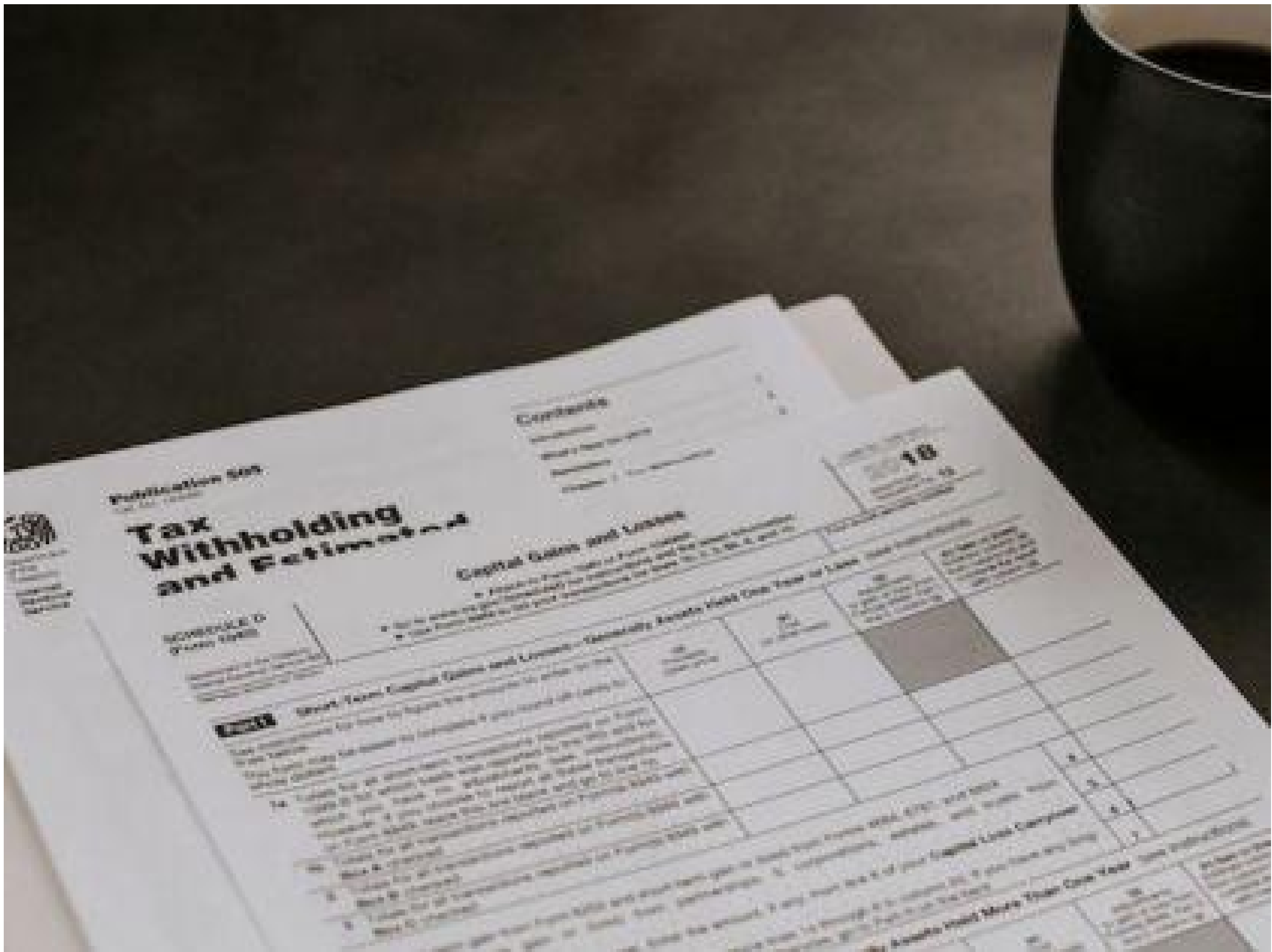


*Did You Forget Your U.S. International Reporting Obligations?*

As another U.S. income tax filing deadline passes, you may be coming to the realization that your tax return didn't include the many required U.S. forms associated with international investments and assets: Portuguese bank and investment accounts. Portuguese business interests. Investment or transfers into non-U.S. investments. Fortunately, the IRS offers certain specialized disclosure programs to U.S. persons depending on whether or not they live inside the U.S.

One such program is the Offshore Streamlined Program. A U.S. person who has not yet been contacted or audited by the IRS may voluntarily submit themself through this

simplified program. Instead of going back to the beginning of time, this program only requires that the U.S. person submit the previous three years of income tax returns (assuming this is done post-April 15, 2022, this would be for calendar years 2021, 2020, and 2019) and the previous six years of FBARs (2016-2021). As part of this submission, the U.S. person needs to explain why they feel that they should qualify for no penalties. Generally, such a "reasonable cause" defense is based on bad advice obtained from tax professionals, but it also could arise in situations where the U.S. person left the U.S. immediately after birth, while a child, was simply born outside the U.S. without any connection to the U.S., hasn't had any connection to the U.S. since, and had no way of knowing that they had a U.S. filing obligation. There have been several recent cases, some conflicting, as to what constitutes reasonable cause and how to compute a related penalty. The explanation presented to the IRS through this process is very important and will be judged, to a certain extent, subjectively. Thus, if the individual at the IRS reading the explanation doesn't like it, they could simply disqualify the use of this special disclosure program and require the U.S. person to go through the regular administrative tax submission process, which could be much longer.

Some people ask me if they could just relinquish their U.S. citizenship and avoid this whole mess. There are two main problems with this approach. First, the IRS has demonstrated that it is more than capable of freezing such a person's non-U.S. accounts if it suspects tax evasion or certain degrees of willful noncompliance. Second, the IRS may impose an exit tax on such individuals. Usually, the exit tax only applies if a person's global net worth exceeds $2 million USD, but it also applies if a person cannot affirmatively declare that they have been compliant with the previous five years of U.S. tax filings. If the exit tax is imposed, it essentially treats the person as if they had liquidated their entire global estate, thereby imposing a tax on the total gain, in excess of certain thresholds. Further, such a person may never gift assets to other U.S. persons in the future without subjecting such U.S. persons to a gift tax of about 40%.

If you are someone who needs to rectify your tax compliance, you will likely need to work with an attorney and CPA to (1) understand your overall ownership structure, noting that determinations as to the U.S. treatment of entities and trusts will need to be made; (2) identify your annual filing obligations based on your overall ownership structure; (3) identify your missed and incomplete filings, along with their potential risks and penalties; (4) identify solutions – the preferred type of reporting or disclosure program with the IRS; and (5) engage in the chosen solution to rectify your compliance. Make sure you engage professionals who have substantial experience working with multi-national families and their tax needs.

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