

# BOVE & LANGA

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## **SOME U.S. REPORTING REQUIREMENTS FOR FOREIGN ASSETS**

### **REPORTING REQUIREMENTS FOR U.S. TAXPAYERS WHO OWN NON-U.S. ASSETS**

#### **1. All Worldwide Income: Form 1040 (U.S. Individual Income Tax Return):**

- a. All worldwide income must be reported on the taxpayer's U.S. income tax return, unless an exception applies. If foreign property is subject to tax in a non-U.S. jurisdiction, a treaty or the foreign tax credit may apply to reduce U.S. income taxes.
- b. If filing Schedule B, then at Part III, check the appropriate boxes to disclose an interest in or signature authority over a financial account in a foreign country.
- c. If the taxpayer is treated as the grantor of any portion of a foreign trust for income tax purposes, all income from that portion must be reported on the taxpayer's U.S. income tax return.

#### **2. Foreign Accounts: FinCEN Form 114 (Report of Foreign Bank and Financial Accounts – sometimes called the Foreign Bank Account Report or “FBAR”)**

- a. The FBAR instructions provide that a taxpayer must file if the taxpayer has a financial interest in or signatory authority over any foreign financial accounts with combined values totaling \$10,000 or more.
- b. However, for accounts over which the taxpayer has signatory authority but no financial interest, the filing deadline has been extended in past years. Pursuant to FinCEN Notice 2013-1, the 2013 filing deadline has been extended to June 30, 2015.
- c. The FBAR must be filed on or before June 30<sup>th</sup> of the year following the calendar year being reported. It must be filed electronically. There is no available extension of time to file.

#### **3. Large Foreign Accounts: Form 8938 (Statement of Specified Foreign Financial Assets)**

- a. This is sometimes referred to as the “FATCA Form,” although many tax forms relate to the “Foreign Account Tax Compliance Act,” or “FATCA.” When Form 8938 is required, it must be filed in addition to the FBAR, even if the same accounts are reported on both forms.

- b. For a U.S. resident taxpayer, file if the taxpayer holds specified foreign financial assets with a total value that exceeds the threshold described below:
  - i. Unmarried Individual or Married Filing Separately: more than \$50,000 on the last day of the tax year or more than \$75,000 at any time during the tax year.
  - ii. Married Filing Jointly: more than \$100,000 on the last day of the tax year or more than \$150,000 at any time during the tax year.
- c. For a U.S. Taxpayer with a tax home in a foreign country and not the U.S., file if the taxpayer holds specified foreign financial assets with a total value that exceeds the threshold described below:
  - i. Unmarried Individual or Married Filing Separately: more than \$200,000 on the last day of the tax year or more than \$300,000 at any time during the tax year.
  - ii. Married Filing Jointly: more than \$400,000 on the last day of the tax year or more than \$600,000 at any time during the tax year.
- d. Form 8938 is attached to and filed with the taxpayer's U.S. income tax return (either Form 1040 or Form 1040NR).

**4. Foreign Mutual Funds and Stock in other Passive Investment Companies: Form 8621 (Information Return by Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund)**

- a. Form 8621 relates to ownership interests in a "Passive Foreign Investment Company" or "PFIC." Foreign mutual funds are one common example of a PFIC, but the definition of PFIC includes any foreign corporation that meets either one of the two following tests:
  - i. Income test: 75% or more of the corporation's gross income for the taxable year is "passive" income as described in Code § 1297(b).
  - ii. Asset test: on average, at least 50% of the foreign corporation's assets produce passive income or are held for the production of passive income.
- b. File and complete Part I if, during the tax year, the taxpayer is a direct or indirect shareholder of a PFIC.
- c. Additional sections of the Form must be completed if the taxpayer makes certain elections (such as the mark-to-market election), receives a direct or indirect distribution from the PFIC, recognizes gain on a direct or indirect disposition of PFIC stock, or is reporting information with respect to a Qualified Electing Fund or mark-to-market election.
- d. Note that a taxpayer may be required to file a **separate** Form 8621 for each PFIC in which stock is held directly or indirectly.
- e. File Form 8621 together with the taxpayer's income tax return for that tax year.

**5. Stock in a Foreign Corporation: Form 926 (Return by a U.S. Transferor of Property to a Foreign Corporation)**

- a. Although many exceptions apply, generally, file if during the tax year, taxpayer contributed property with a value over \$100,000 to a foreign corporation.
- b. If a partnership contributed property to a foreign corporation, any U.S. partner must file Form 926 with respect to that partner's share unless an exception applies. Any U.S. partner of the partnership is treated as a transferor of the partner's proportionate share of the property.
- c. File Form 926 together with the taxpayer's income tax return for the tax year that includes the date of the transfer.

**6. Ownership, Purchase, or Sale of Stock in a Foreign Corporation: Form 5471 (Information Return of U.S. Persons With Respect to Certain Foreign Corporations)**

- a. File if during the tax year, taxpayer acquired or disposed of enough stock to cross the threshold of 10% of the total value of a foreign corporation's stock, or 10% of the total combined voting power of all classes of stock with voting rights.
- b. File if the taxpayer is a U.S. citizen or resident and during the tax year, was officer or director of a foreign corporation in which any U.S. person crossed the stock ownership threshold described above.
- c. File if, during the tax year, the taxpayer owned stock with more than 50% of the total combined voting power or total value of shares of stock in a foreign corporation for an uninterrupted period of at least 30 days during the foreign corporation's annual accounting period. Certain attribution rules apply.
- d. File if for at least 30 days during the tax year, the taxpayer owned ten percent or more of the voting shares of a Controlled Foreign Corporation that was also a captive insurance company.
- e. If multiple taxpayers have an obligation to report the same information on Form 5471, one person may file Form 5471 and the applicable schedules for other taxpayers with the same filing requirements.
- f. File Form 5471 together with the taxpayer's income tax return for that tax year.

**7. Ownership of a Foreign Partnership: Form 8865 (Return of U.S. Persons With Respect to Certain Foreign Partnerships)**

- a. File if, at any time during the tax year, the taxpayer met any of the following requirements with respect to a foreign partnership:
  - i. Owned more than a 50% interest in the partnership, applying attribution rules.

- ii. Owned a 10% or greater interest in the partnership at a time when more than 50% of the partnership was owned by U.S. persons, each owning at least 10% interests, applying attribution rules. This rule does not apply if one U.S. taxpayer owned more than a 50% interest in the partnership.
- iii. Contributed enough property to a foreign partnership to cross the 10% interest threshold, or contributed more than \$100,000 in a twelve-month period ending on the date of the transfer, applying attribution rules.
- iv. Acquired or disposed of enough interest to cross the 10% interest threshold. This can happen even if the taxpayer does not contribute to the partnership or receive any distribution. For example, the other partners may contribute or receive property so that the taxpayer's direct proportional interest in the partnership changes.
- v. Any U.S. person involved with a foreign partnership should seek advice regarding the various attribution rules and filing exceptions.

b. File Form 8865 together with the taxpayer's income tax return for that tax year.

**8. Ownership of a Disregarded Entity: Form 8858 (Information Return of U.S. Persons With Respect to Foreign Disregarded Entities)**

- a. File if, at any time during the tax year, taxpayer is the "tax owner" of a foreign disregarded entity.
- b. Note that certain attribution rules apply for controlled foreign corporations that are tax owners of foreign disregarded entities.
- c. In certain cases, if multiple taxpayers have an obligation to report the same information on Form 8858, one person may file Form 8858 and the applicable schedules for other taxpayers with the same filing requirements.
- d. File Form 8858 together with the taxpayer's income tax return for that tax year.

**REPORTING REQUIREMENTS FOR U.S. PERSONS RECEIVING FOREIGN GIFTS OR INHERITANCES, FOR FOREIGN ESTATES WITH U.S. BENEFICIARIES, AND FOR FOREIGN TRUSTS WITH U.S. OWNERS OR BENEFICIARIES**

**1. Form 3520 (Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts).**

- a. File if, during the tax year, the taxpayer is a U.S. person and receives any of the following:
  - i. Gifts or inheritances from non-U.S. citizen, non-U.S. residents in excess of \$100,000

1. Gifts from different persons and estates must be aggregated if the taxpayer knows or has reason to know that those persons are related to each other, or if one is acting as a nominee or intermediary for the other.
  2. Do not include any qualified tuition or medical payments made on behalf of the U.S. person.
    - ii. Any distribution from a foreign trust, including certain loans or uncompensated use of trust property.
- b. File if, during the tax year, the taxpayer is a U.S. person and is treated as the owner of any part of the assets of a foreign trust.
  - c. File if, during the tax year, the taxpayer is a U.S. person who contributes assets to a foreign trust, even if the taxpayer receives property in exchange for the contribution. (There are limited exceptions to this rule.)
  - d. File if the taxpayer represents the estate of a U.S. person who died, if the decedent was treated as owner of any portion of a foreign trust during life, or if any portion of a foreign trust is includible in the decedent's gross estate for estate tax purposes.
  - e. Note that attribution rules may apply to property received or owned by a relative or a closely-held company.
  - f. File on or before the date that the taxpayer's income tax return is due (including extensions), but note that Form 3520 is sent to a separate address, with attachments. For the representative of an estate, file on or before the date the estate tax return is due, including extensions.

## **2. Form 3520-A (Annual Information Return of Foreign Trust with U.S. Owner)**

- a. File if, during the tax year, the taxpayer is trustee of a foreign trust having at least one U.S. owner. (There are limited exceptions to this rule.) Note that under the instructions to Form 3520-A, the definition of a trust having at least one U.S. owner is expansive, as is the definition of a U.S. beneficiary.
- b. Note that each U.S. person treated as an owner of any portion of a foreign trust is responsible for ensuring that the foreign trust files Form 3520-A and furnishes the required annual statements to its U.S. owners and U.S. beneficiaries.
- c. Note that a foreign trustee may be required to appoint a U.S. agent to act on its behalf. Use the "Authorization of Agent" form provided in the instructions to Form 3520-A.
- d. File by mailing the form on or before the 15<sup>th</sup> day of the 3<sup>rd</sup> month after the end of the trust's tax year, to the Utah address listed on the form. To request an extension of time to file, submit Form 7004.

- e. Provide copies of the Foreign Grantor Trust Owner Statement and the Foreign Grantor Trust Beneficiary Statement to U.S. owners and U.S. beneficiaries, as applicable, by the 15<sup>th</sup> day of the 3<sup>rd</sup> month after the end of the trust's tax year.

**3. Form 1040NR (U.S. Nonresident Alien Income Tax Return)**

- a. File if the taxpayer is trustee of a foreign estate or trust with U.S. income tax reporting requirements. Refer to Form 1041.

**4. Form 8957 (Foreign Account Tax Compliance Act (FATCA) Registration)**

- a. The trustee of any foreign trust should seek professional advice regarding its registration requirements under FATCA.
- b. The penalties for failing to register can include non-refundable withholding of 30% of the proceeds of sale of any U.S. asset owned by the trust.

**5. Form 8966 (Foreign Asset Tax Compliance Act (FATCA) Report)**

- a. The trustee of any foreign trust should seek professional advice regarding its reporting requirements under FATCA.

**DISCLAIMER**

**Please note that this document is not an exhaustive list of all tax and reporting requirements associated with foreign assets and does not constitute legal advice or professional assistance in any manner. Please consult a qualified professional, such as a certified public accountant, for advice specific to your circumstances.**