American Citizens Abroad Zurich,

Craig Thompson

21th September 2016

westleton drake

US tax for overseas Americans

- US tax imposed on worldwide income and gains
- Foreign earned income exclusion of $100,800 [2015]
- A credit for foreign tax is allowed on income not covered by the foreign earned income exclusion
  - Credits allowed on a paid or accrued basis
  - Tax attached to excluded income is not creditable.
  - Beware the irrevocable election to accrue taxes
  - Swiss residents may face a ‘foreign tax credit gap’.
- Automatic extension to file tax returns to June 15^{th}
  - Interest runs from April 15^{th}
- Beware of ‘domicile’ States still expecting to tax as a resident.

westleton drake

Form 1040

- You must file if your <u>worldwide</u> gross income exceeds:
  - Single $10,300
  - Married filing Jointly $20,600
  - Married filing Separately $10,300
    - ➢Thresholds increase if aged over 65.
- Don’t forget your children!
- You are not exempt from filing because your income is excluded by the foreign earned income exclusion. You need file a tax return to make a claim to the exclusion

Form 8960

- Calculates the Net Investment Income Tax (NIIT) introduced for TY 2013.
- Levies a surcharge of 3.8% on investment income for those with adjusted gross income (AGI) over a certain amount.
- AGI threshold depends on filing status
- Nonresident alients are not required to pay the NIIT
- Some debate over whether the tax is an income tax or a social security tax and its applicability to Swiss resident US taxpayers.

Form 8938:
Statement of Specified Foreign Financial Assets

- Report of certain foreign financial assets as part of tax return filing required since 2011
- Essentially all financial assets (not real estate) other than those reported on other information returns (see later slides)
- In addition to, not in lieu of, the FBAR.
- For taxpayers living abroad 8938 is required if value of assets exceed:
  - $200k on last day of tax year
  - $300k at any time
- Thresholds double for married taxpayers filing jointly
- Penalty for not filing - $10,000

westleton drake

Form 114: The ‘FBAR’

- Report of all foreign bank and financial accounts including maximum balances in the year.
- Required where aggregate maximum balance exceeds $10,000.
- Mandatory requirement to e-file.
- Penalty for non-wilful non-filing $10,000.
- Accounts with less than $10,000 are still required to be reported if filing threshold otherwise met.
- Filing deadline will be the same as the deadline for the tax return from 2017

westleton drake

Duplicative FATCA Reporting

- National Taxpayer Advocate once again recommended that financial accounts reported on the 114 be exempt from reporting on the 8938.
- Also recommended that specified financial accounts held by a financial institution in the country in which the US taxpayer is a bone fide resident be exempt from reporting on the 8938
- IRS has refused in the past to implement these suggested changes.

Other forms to watch for…

- Form 5471 – reporting interests in certain foreign corporations.
- Form 8865 – reporting interests in certain foreign partnerships.
- Form 3520 – reporting the receipt of foreign gifts, bequests and transactions with foreign trusts.
- Form 3520A – annual return of a 'Foreign Grantor Trust'
- Extreme penalties for non-compliance.
- Special procedures to correct non compliance.

westleton drake

Passive Foreign Investment Companies (PFICs)

- A foreign company where:
  - At least 75% of income is passive income.
  - At least 50% of assets are passive income producing asset.
- Therefore catches all foreign financial fund products which would be classified as a ‘Company’ for US tax purposes
- Dividends and any exit proceeds would be ordinary income.
- Some dividends and all exit proceeds allocated across holding period with deemed interest charge on amounts allocated to prior tax years.
- Report of Form 8621 within income tax return

westleton drake

US tax on sale of Swiss residence

- Calculate gain:
  - Sales price less sales cost using CHF/USD exchange rate on date of sale
  - Less: original purchase price less purchase expenses using CHF/USD exchange rate on date of purchase
  - Less: any improvements made to the property using CHF/USD exchange rate on date of each improvement
- Qualify for Exclusion of gain from sale of Principal Residence?
  - Owned and used as principal residence for at least 2 out of the last 5 years ending on the date of sale;
  - $250,000 exclusion per person ($500,000 married filing joint);

OVDP and Streamlined Disclosure

- IRS programs for taxpayers seeking to come back into compliance.
- Running since 2009 and 2014 respectively
- Generally considered a success from the IRS's point of view
- Recently IRS has revised the requirements for the non wilfulness statement and in the Streamlined Disclosure and there are more examples of tax payers being removed from the Streamlined Program and required to re-apply.

What does the future hold?

- IRS
  - Developing a new concept of operations
    - Shift away from provision of telephone services to online interaction
    - Increasing reliance on user fees charged to taxpayers for IRS services
  - Concerns about declining provision for overseas taxpayers highlighted in the National Taxpayer Advocate’s latest report to Congress.
    - Last of the tax attache posts closed in 2015.
  - International Individual Taxpayer Assistance Team
    - Not permanent, no formal charter, declining activity

What does the future hold?

- US Presidential Election in November
  - 20 candidates representing parties, many more independent candidates running
  - None of the main party candidates specifically address overseas US taxpayers in their tax plans.

Questions & discussions

Westleton Drake S.a.r.l.
Quai du Mont-Blanc 27
1201 Geneva

+41 (0)22 310 6450

Westleton Drake GmbH
Waldmannstrasse 6
8001 Zurich

+41 (0)43 333 0013
+41 (0)44 455 6012

info@westletondrake.ch
www.westletondrake.ch
Download our App for iPhone and Android.
Search: Westleton Drake on the AppStore & Google Play Store