

10 IRS FORMS YOU NEED TO KNOW

Many a Swiss asset manager has gone astray attempting to navigate the arcane world of US tax filings. Martin Straub from Envisage Wealth Management sets out 10 essential forms for every Swiss firm with US clients on its books



MARTIN STRAUB

Envisage Wealth Management

At the beginning of every year, 1099 forms and countless other documents start to roll in from banks around the globe for Americans living overseas. Many of us count Americans living outside the US as clients and business partners.

Remember, Americans and green card holders living overseas can't just ignore or 'opt out' of these filings. They are obligatory, and there are sometimes heavy penalties for failure to file, as all too many Swiss firms have discovered over the years.

There are a lot of independent asset managers, fund managers and so on out there who 'just happen to have' some clients who qualify as US persons. And there is a lot of uncertainty out there.

With this in mind, here is a brief overview of the most important forms and which clients will need to complete them.

This list is not exhaustive. It is intended to cover the main filings that most Americans who are living overseas will need to complete. Remember that even US clients who have not lived in the country for 20 years or more must complete the filings if they are considered, for whatever reason, to fall under US tax rules.

Penalties for not filing can be painful, even if failure to file was not intentional. The IRS is increasingly taking the view that there has been so much publicity and information provided, plus so many opportunities provided for regularisation – including the various voluntary disclosure programmes over the past 10 years – that there is no excuse for not filing.

If this is new to you and you think you may be affected by US rules or you think one of your clients may be covered, please do seek tax counsel. ■

Form 2555 – Foreign-Earned Income

This form excludes foreign-earned income, usually salary, of up to \$99,700 from US taxation. There is a housing deduction plus a few other details, but basically everything above the \$99,700 is subject to US taxation.

Form 1116 – Foreign Tax Credit

If you pay foreign taxes, you may be able to get a credit against US taxes by filling out the amount of foreign taxes paid on this form.

FinCEN 114 – Report of Foreign Bank and Financial Accounts

This is the now infamous 'FBAR' form. With origins in the fight against racketeers, drug traffickers and organised crime, it was revived from the crypt and has found new life in recent years, tracking Americans' bank accounts overseas. Essentially, if you are an American, every bank account, brokerage account and anything else that might conceivably be construed as a financial account goes on here.

Form 8938 – Statement of Foreign Financial Assets

Everything that goes onto the FBAR, plus anything and everything else you have of value, if you surpass a minimum level of foreign assets in that particular year. For example, for a single person, the limit is \$200,000 in aggregate assets.

Form 926 – Return of a US Transferor of Property to a Foreign Corporation

If you transfer cash or other assets, including property, to a foreign company, this form needs to be filled in and filed.

Form 5471 – Information Return of US Person with Respect to Certain Foreign Corporations

If you hold more than 10% of any non-US company, here is where you report it. Americans who own foreign businesses or stakes in restaurants, bars, trading companies, manufacturing companies, holding or investment companies must report their details here.

Form 8621 – Information Return for Passive Foreign Investment Company

Every investment fund, mutual fund, exchange-traded fund, money market fund, some retirement mutual funds, holdings in investment companies and anything that even vaguely looks like an investment fund goes in here, individually listed.

Form 8865 – Information Return of US Persons with Respect to Certain Foreign Partnerships

If you are a partner in a foreign partnership with five or fewer US partners, each owning 10% or more interest and together having more than 50% of the partnership, this is where you report income from and transactions with the partnership.

Form 3520 – Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts

Another infamous form. This is where you report gifts or transfers received from foreign trusts (as a beneficiary) as well as corporations and partnerships.

Form 3520A – Information Return of Foreign Trust with a US Owner

If you are an American based in the UK, Asia or Europe and have a trust, this is where you provide all information regarding the trust, its individual US beneficiaries and information on anyone considered an owner of any portion of that trust.