

# AGOSTINO & ASSOCIATES

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## Agostino & Associates Welcomes Brian Burton

Agostino & Associates welcomes Brian Burton to our firm. Mr. Burton received his J.D. from the University of Pennsylvania Law School. He previously served as Of Counsel at the boutique financial services law firm Sagat/Burton LLP. Mr. Burton spent

the first seven years of his career at Proskauer Rose LLP in New York City as a Litigation Associate in the Corporate Defense and Investigations group where he handled a wide variety of government and regulatory investigation matters.

## Procedural Challenges to Interest and Penalties in CDP

One of the challenges in collection due process proceedings is convincing the Internal Revenue Service ("IRS") to compromise their penalty and interest claims. The purpose of this article is to suggest procedural challenges that are often overlooked by practitioners in Collection Due Process ("CDP") cases.

At the outset, this article assumes that: (a) you or your taxpayer filed a

timely CDP request (used Certified Mail, Return Receipt Requested to send in a properly completed IRS Form 12153 to the correct address) in response to the "Notice of Federal Tax Lien" and/or the "Final Notice of Intent to Levy and Notice of Your Right to a Hearing;" and (b) you or your taxpayer have raised all of your substantive defenses to the tax, penalty and interest assessments at is-

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## Common Forms Associated with International Tax Compliance - Part I

We are a nation of immigrants. The 2011 census shows that this fact is especially true in New Jersey.<sup>1</sup> It is unreasonable to assume that taxpayers immigrating here have no business interests outside the United States. Thus, return preparers need to familiarize themselves with the tax

forms implicated when taxpayers enter into transactions resulting in money coming into or leaving the United States.

The article that follows is a brief description of the individual and entity

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## Upcoming Events and Seminars

- A&A Party Bus from ABA Section of Taxation 2014 May Meeting Bus from DC to NYC (May 10) [tinyurl.com/mjub7fk](http://tinyurl.com/mjub7fk)
- Tax Issues Affecting the Family (May 20) New York, NY [tinyurl.com/kho675d](http://tinyurl.com/kho675d)
- Collection Due Process (June 25) New York, NY [tinyurl.com/mbhfjv9](http://tinyurl.com/mbhfjv9)
- 11th Annual Agostino & Associates 4th of July Barbecue (June 27) Hackensack, NJ [tinyurl.com/m9rl3yp](http://tinyurl.com/m9rl3yp)

**For more information, visit our website at:**

[www.AgostinoLaw.com](http://www.AgostinoLaw.com)

**To register for one of the these seminars, click the link above.**

## Pro Bono

Should you have any questions or comments concerning seminars or the newsletter, or if you would like to volunteer with NY and/or NJ Pro Bono programs, please contact Erica Son, Esq. at (201) 488-5400, ext. 131, or via email at: [eson@agostinolaw.com](mailto:eson@agostinolaw.com)

## Procedural Challenges to Interest and Penalties in CDP

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sue (e.g., reasonable cause, first-time abatement, regulatory exemptions).

The timely filing of a CDP request preserves the client's right to challenge the IRS settlement officer's determination in the U.S. Tax Court. In our experience, the mere ability to challenge the IRS's determination in the U.S. Tax Court is taken into consideration by the settlement officer when evaluating our liability challenges and collection alternatives.

Next, we assume the participants in the CDP have a common goal (i.e., to reach an agreement on a collection alternative). If the penalty is the only impediment to an installment agreement, settlement officers will seriously consider a procedural or substantive defense to a penalty. Like us, the settlement officer does not want to litigate a case that can be closed as "agreed." IRC § 7122(a). These challenges should not be raised by taxpayers looking to delay collection.

Against this background, in almost every CDP case, where penalty and interest are at issue we recommend that the taxpayer:

1. File an attachment to the Form 12153 specifically requesting (preferably in writing) that the hearing officer "obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met"; IRC § 6330(c)(1).
2. File a Freedom of Information Act request for the documents demonstrating that the requirements of IRC §§ 6303(a), 6751, 6404(e) & (g), and IRM 0.1.1.2.3 (11-25-2011) have been met.

Similarly, the attachment to the Form 12153 should remind the IRS that the enabling statutes, IRC §§ 6320 and 6330, allow the taxpayer to challenge the underlying liability if "the person did not receive any statutory notice of deficiency for such tax liability or

did not otherwise have an opportunity to dispute such tax liability." In most cases, the taxpayers have not had a prior opportunity to challenge the IRS interest and penalty determinations. Therefore, in most CDP cases, the taxpayer has the right to challenge the assessment and collection of penalties and interest.

The request that the IRS settlement officer obtain verification from the Secretary that the requirements of any applicable law or administrative procedure have been met should specifically make reference to verify compliance with IRC § 6751. IRC § 6751 was added to Title 26 of the US Code by the 1998 IRS Reform Act § 3306. IRC § 6751 has two main parts and both should be considered when challenging a penalty.

1. IRC § 6751 (a) requires that the IRS "shall include with each notice of penalty under this title information with respect to the name of the penalty, the section of this title under which the penalty is imposed, and a computation of the penalty." The IRS (e.g., in the IRM) has at times listed the various items that constitute a notice: "a revenue agent's report, a thirty-day letter, a notice of determination of worker classification, a notice and demand, or a billing notice mailed subsequent to the notice and demand are all notices of penalty." See IRM 4.23.9.4.1 (05-14-2008).
2. More important, Subsection (b)(1) of IRC § 6751 states that "[n]o penalty under this title shall be assessed **unless the initial determination of such assessment is personally approved (in writing)** by the immediate supervisor of the individual making such determination or such higher level official as the Secretary may designate." (Emphasis added.)

IRM 20.1.1.2.3 (11-25-2011) Managerial Approval for Penalty Assessment, specifically deals with the requirements of managerial approval. The IRM suggests that if the supervisor did not meaningfully

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## Procedural Challenges to Interest and Penalties in CDP

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review the penalty determination then the assessment of the penalty is void. Pursuant to IRC § 6751, the required memo must be in writing. Stated another way, if the IRS cannot produce written approval of the penalty, then the settlement officer must concede the penalty.

Note that the IRM says the examiner (e.g., the person determining the penalty) is not required to provide this document to the taxpayer. However, the IRS also says that the taxpayer is entitled to this document (i.e., the approval) in response to a Freedom of Information Act ("FOIA") request. See IRM 4.23.9.4 (04-01-2011) Managerial Approval. Accordingly, your FOIA request should have specifically asked for the documents required by Section 6751. If the administrative file has been destroyed or the FOIA file does not include the IRM 20.1.1.2.3 memo, then penalties are subject to negotiation and settlement.

Unfortunately, some penalties are excepted from the written approval requirement by IRC § 6751(b)(2). Specifically, the penalties prescribed by IRC § 6651 (Failure to File Tax Return or to Pay Tax), IRC § 6654 (Failure by Individual to Pay Estimated Income Tax), IRC § 6655 (Failure by Corporation to Pay Estimated Income Tax) and "any other penalty automatically calculated through electronic means" are not subject to IRC § 6751. The IRM suggests that the phrase calculated by electronic means "encompasses something more than merely an electronic device to perform arithmetic functions to determine the amount of a penalty. Instead, the assessment of a penalty qualifies as one calculated through electronic means if the penalty is assessed free of any independent determination by an IRS employee as to whether the penalty should be imposed against a taxpayer." Consequently, the IRS has considered the substantial underreporting penalty pursuant to IRC § 6662(d)(1)(A) as meeting the exception unless the taxpayer responded to the proposed penalty before it was assessed. See SCA 200211040. We request

that the IRS verify compliance with IRC § 6751 unless the penalty was one of the three exceptions provided in the statute.<sup>1</sup>

Convincing a settlement officer to accept a challenge to the government's interest computation is more difficult than the penalty challenges.

Here we ask the settlement officer to verify compliance with IRC §§ 6404(e) & (g). IRC § 6404(g)(1)(A) specifically provides:

(A) In general.-In the case of an individual who files a return of tax imposed by subtitle A for a taxable year on or before the due date for the return (including extensions), if the Secretary does not provide a notice to the taxpayer specifically stating the taxpayer's liability and the basis for the liability before the close of the 36-month period beginning on the later of-

- (i) the date on which the return is filed; or
- (ii) the due date of the return without regard to extensions, the Secretary shall suspend the imposition of any interest, penalty, addition to tax, or additional amount with respect to any failure relating to the return which is computed by reference to the period of time the failure continues to exist and which is properly allocable to the suspension period.

There are various conditions in IRC § 6404(g) that may make the suspension inapplicable to your particular client. Here too, if the IRS cannot produce the documents referred to in IRC § 6404(g), the settlement officer can negotiate interest.

Another section that is frequently overlooked is IRC § 6601(e)(2). This section provide that interest on an assessed penalty does not begin to run until notice and demand is made. IRC § 6601(e)(3) ; IRC § 301.6601-1(f)(3). Stated simply, interest on the "assessable penalties<sup>2</sup>, additional amounts or addition to tax (except for some specific additions such as IRC § 6651(a)(1)) run from the "date of the notice and demand to the date of payment."

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## Procedural Challenges to Interest and Penalties in CDP

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***IRC § 6303(a) requires that a “notice and demand” be sent to taxpayers after assessment pursuant to IRC § 6203. If a notice and demand was not issued then interest on the penalty does not start to run. In Re Dewberry, 158 B.R. 979 (Bankr. W.D. Mich. 1993)***

As part of the CDP process, ask the officer to verify that the “notice and demand” was issued and to provide you copies of said notices. If there is no proof that the “notice and demand” was issued, you should request that the interest on the penalty be abated or compromised. IRS settlement officers looking to close a case have abated interest where a notice and demand for the trust fund recovery penalty was not sent to the taxpayer’s last known address.

In a CDP case, the jurisdiction of the Appeals Office is extremely broad. Practitioners should always consider filing a FOIA request and the available procedural challenges to the collection of tax, penalty and interest.

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1 In a recent tax court case, Judge Kerrigan remanded the case back to the Appeals Office. The IRS subsequently issued a Supplemental Notice of Determination abating the Civil Penalty assessment as the IRS had not met the requirements of IRC § 6751(b)(1), available at: <http://www.livefreenow.org/downloads/victory/FP3.pdf>. In addition a recent TIGTA report has emphasized the importance of properly approving in writing the preparer penalty assessment, available at: [http://www.aicpa.org/PUBLICATIONS/TAXADVISER/2014/JANUARY/Pages/tpp\\_jan2014-story-04.aspx](http://www.aicpa.org/PUBLICATIONS/TAXADVISER/2014/JANUARY/Pages/tpp_jan2014-story-04.aspx) & [http://www.treasury.gov/tigta/auditreports/2013reports/201330075\\_oa\\_highlights.html](http://www.treasury.gov/tigta/auditreports/2013reports/201330075_oa_highlights.html).

2 § 301.6651-1 Failure to file tax return or to pay tax.

§ 301.6652-1 Failure to file certain information returns.

§ 301.6652-2 Failure by exempt organizations and certain nonexempt organizations to file certain returns or to comply with section 6104(d) for taxable years beginning after December 31, 1969.

§ 301.6652-3 Failure to file information with respect to employee retirement benefit plan.

§ 301.6653-1 Failure to pay tax.

§ 301.6654-1 Failure by individual to pay estimated income tax.

§ 301.6655-1 Failure by corporation to pay estimated income tax.

§ 301.6656-1 Abatement of penalty.

§ 301.6657-1 Bad checks.

§ 301.6658-1 Addition to tax in case of jeopardy.

§ 301.6659-1 Applicable rules.

§ 301.6671-1 Rules for application of assessable penalties.

§ 301.6672-1 Failure to collect and pay over tax, or attempt to evade or defeat tax.

The assessable penalties include: § 301.6673-1 Damages assessable for instituting proceedings before the Tax Court merely for delay.

§ 301.6674-1 Fraudulent statement or failure to furnish statement to employee.

§ 301.6678-1 Failure to furnish statements to payees.

§ 301.6679-1 Failure to file returns, etc. with respect to foreign corporations or foreign partnerships for taxable years beginning after September 3, 1982.

§ 301.6682-1 False information with respect to withholding allowances based on itemized deductions.

§ 301.6684-1 Assessable penalties with respect to liability for tax under chapter 42.

§ 301.6685-1 Assessable penalties with respect to private foundations' failure to comply with section 6104(d).

§ 301.6686-1 Failure of DISC to file returns.

§ 301.6688-1 Assessable penalties with respect to information required to be furnished with respect to possessions.

§ 301.6689-1T Failure to file notice of redetermination of foreign tax (temporary).

§ 301.6690-1 Penalty for fraudulent statement or failure to furnish statement to plan participant.

§ 301.6692-1 Failure to file actuarial report.

§ 301.6693-1 Penalty for failure to provide reports and documents concerning individual retirement accounts or annuities.

§ 301.6707-1T Questions and answers relating to penalties for failure to furnish information regarding tax shelters.

§ 301.6707A-1 Failure to include on any return or statement any information required to be disclosed under section 6011 with respect to a reportable transaction.

§ 301.6708-1T Failure to maintain list of investors in potentially abusive tax shelters (temporary).

§ 301.6712-1 Failure to disclose treaty-based return positions.

§ 301.6721-0 Table of Contents.

§ 301.6721-1 Failure to file correct information returns.

§ 301.6722-1 Failure to furnish correct payee statements.

§ 301.6723-1 Failure to comply with other information reporting requirements.

§ 301.6724-1 Reasonable cause.

§ 301.6723-1A Failure to include correct information.

If you would like to volunteer at a New York City Tax Court Calendar, please contact Erica Son at [eson@agostinolaw.com](mailto:eson@agostinolaw.com) or Stephen Lessard at [slessard@orrick.com](mailto:slessard@orrick.com)

Date	Judge	IRS Office	Pro Bono Program
April 7	Judge Wells	New York, NY	NYCLA
May 5	Judge Panuthos	Newark, NJ	Rutgers/ NJ-LITCs
May 12	Judge Colvin	Newark, NJ	Rutgers/ NJ-LITCs

## Common Forms Associated with International Tax Compliance

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level tax forms that need to be completed when U.S. dollars are invested or distributed abroad. Tax professionals should be aware of these forms and know when the Code requires them.

### IRS Form 8621

On an individual level, IRS Form 8621 must be used when a U.S. taxpayer is a direct or indirect shareholder of a Passive Foreign Investment Company ("PFIC"). Generally, a PFIC is a foreign corporation which (a) has 75 percent or more of its gross income as "passive" income<sup>2</sup>; or (b) the average percentage of assets held by such corporation during the taxable year which produce passive income or which are held for the production of income, is at least 50 percent.<sup>3</sup>

Form 8621 is required when the shareholder (1) received direct or indirect distributions from the PFIC, (2) recognizes gain on the disposition of PFIC stock, or (3) elects to either extend the time for payment of a related tax, or reclassify the distribution as a deemed dividend or sale of stock.<sup>4</sup> When required, Form 8621 is filed simultaneously with the taxpayer's income tax return.<sup>5</sup>

Although there are no direct penalties for failure to file Form 8621, failure to file could result in the extension of the three-year assessment period from which the IRS may collect tax<sup>6</sup> (and thus any additional tax discovered owed could be subject to whatever interest and penalties apply to unpaid taxes).

### IRS Form 926

IRS Form 926 must be filed when a U.S. citizen, resident or domestic entity transfers certain property to a foreign corporation.<sup>7</sup> Such transfers occur in complete liquidations of corporate subsidiaries,<sup>8</sup> the transfer of property to a corporation controlled by the transferor;<sup>9</sup> exchanges of stock and securities in corporations who are parties to a reorganization;<sup>10</sup> the distribution of stock and securities to a

corporation controlled by the corporate distributor;<sup>11</sup> the receipt of additional consideration in certain corporate distributions or exchanges;<sup>12</sup> or unrecognized<sup>13</sup> corporate gain or loss.<sup>14</sup> The Treasury Regulations note exceptions and special rules for the reporting requirement. Any U.S. person, for instance, that makes one of the above-described transactions does not have to file a Form 926 if he owned less than 5 percent of the foreign corporation (both total voting power and total value) immediately after the transfer. Instead, he qualifies for certain special tax treatment.<sup>15</sup> When required, this form is filed along with the taxpayer's income tax return.

If a person fails to file Form 926, IRC § 6038B imposes its own penalty of 10% of the fair market value of the property transferred, unless "such failure is due to reasonable cause and not willful neglect."<sup>16</sup> The penalty is limited to \$100,000 unless the failure to comply was due to "intentional disregard"<sup>17</sup> — that is, if the U.S. transferor actually knew of the rule or regulation that was disregarded, and his failure to comply with the rule was not due to "reasonable cause."<sup>18</sup>

Failure to file Form 926 is not the only way the penalty can be triggered. A failure to report material information required or the provision of false or inaccurate information in purported compliance with the Code will trigger the above penalty.<sup>19</sup>

When the Service asserts this penalty, the "reasonable cause" exception applies; that is, the U.S. transferor who "fails to comply" with filing Form 926 can be relieved of a penalty if "able to demonstrate that the failure [to comply] was due to reasonable cause and not willful neglect."<sup>20</sup> The IRS will only consider a "reasonable cause" statement if:

promptly after the U.S. transferor becomes aware of the failure, an amended return is filed for the taxable year to which the failure relates that includes the information that should have been included with the original return for such

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## Common Forms Associated with International Tax Compliance

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taxable year or that otherwise complies with the rules of this section, and that includes a written statement explaining the reasons for the failure to timely comply.<sup>21</sup>

Taxpayers seeking a reasonable cause abatement should file an amended tax return for the tax year and include a statement explaining the facts and circumstances giving rise to the amended tax return.<sup>22</sup>

### IRS Form 8858<sup>23</sup>

U.S. persons (including individuals, domestic partnerships, corporations, trusts and estates) owning a foreign disregarded entity (“FDE”) are required to file Form 8858.<sup>24</sup> The Treasury Regulations define a FDE as an entity that is created or organized in a foreign country and is disregarded as separate from the owner for U.S. tax purposes<sup>25</sup>—most often, a single-member LLC created overseas (which functions as a corporation, but is taxed on the owner’s Schedule C). Form 8858’s filing requirement extends to any U.S. person who owned a FDE during the tax year and those U.S. persons who own an interest in a controlled foreign partnership (CFP) or controlled foreign corporation (CFC). Form 8858 is due with the taxpayer’s yearly tax return.

Failure to file a Form 8858 will result in penalties of \$10,000 for each annual accounting period that the form is not filed.<sup>26</sup> If the taxpayer’s noncompliance continues 90 days after the Service notifies the taxpayer of the failure to file, the taxpayer could owe up to an additional \$50,000 in penalty.<sup>27</sup> Further, the failure to comply may reduce a U.S. person’s available foreign tax credit.<sup>28</sup> All of these penalties are subject to the reasonable cause exception.<sup>29</sup>

### FinCEN Form 105

When cash in excess of \$10,000 is physically removed from or brought into the United States, the United States Treasury requires such transaction

be recorded on FinCEN Form 105.<sup>30</sup> This requirement applies whether the funds are removed by person or by mail,<sup>31</sup> however, the form need not be filed for a “transfer of funds through normal banking procedures, which does not involve the physical transportation of currency or monetary instruments.”<sup>32</sup> Thus, Form 105 is required only for the physical transportation of funds into or out of the country. Specifically, a recipient of currency must file Form 105 within 15 days of the receipt of funds with the Customs officer in charge at any port of entry or departure, or with the Commissioner of Customs in Washington D.C.<sup>33</sup> If the funds are mailed, Form 105 must be filed on or before the date of entry to the U.S.<sup>34</sup>

Failure to file Form 105 carries potentially hefty civil and criminal penalties. A fine of up to \$500,000 and imprisonment of up to 10 years may result from failure to file a report or filing a false or fraudulent report.<sup>35</sup> Further, the monetary instrument or currency itself may be subject to seizure and forfeiture.<sup>36</sup>

A more comprehensive summary of the international tax forms, including, but not limited to, filing deadlines, penalties, and procedures for penalty abatement is available on our website.<sup>37</sup> Part II of this article will deal with Forms 1042 and 1042-S and income subject to withholding.

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1 Language Use in the United States: 2011, American Community Survey Reports, by Camille Ryan, available at: <https://www.census.gov/prod/2013pubs/acs-22.pdf>

2 The Code defines “passive income” as “any income which is of a kind which would be foreign personal holding company income”—that is, dividends; interest; royalties or rents not derived in active business; annuities; certain property transactions (such as interest in a trust, partnership, or real estate mortgage investment conduit); domestic commodities transactions (including futures, forward, etc.); foreign currency gains; income equivalent to interest; income from notional principal contracts; payments in lieu of dividends; or amounts received from the sale (or other disposition) of corporate personal service contracts where the corporation has no say in who will be designated to perform the services. IRC § 1297(b); see also IRC § 954(c).

3 IRC § 1297.

4 Form 8621, Instructions, available at: <http://www.irs.gov/instructions/>

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i8621/ch01.html; see also Treas. Reg. § 1.7701(l)-3(f)(1)(iv).  
 5 *Id.* Note that IRS is revising the IRS Form 8621 as of December 2013.  
 6 Treas. Reg. § 1.1298-1T(d).  
 7 IRC § 6038B; see also Treas. Reg. § 1.6038B-1; Form 926, Filing Requirement for U.S. Transferors of Property to a Foreign Corporation, available at <http://www.irs.gov/Individuals/International-Taxpayers/Form-926---Filing-Requirement-for-U.-S.-Transferors-of-Property-to-a-Foreign-Corporation> (last updated Apr. 12, 2013).  
 8 See IRC § 332  
 9 See IRC § 351  
 10 See IRC § 354  
 11 See IRC § 355  
 12 See IRC § 356  
 13 See IRC § 361  
 14 IRC § 6038B(a). Note there are special rules for corporate and partnership transferors. See Treas. Reg. § 1.6038B-1(b).  
 15 See Treas. Reg. § 1.6038B-1(b)(2) for further information and details on exceptions to the Form 926 requirement.  
 16 IRC § 6038B(c)(1)–(2); see also Treas. Reg. § 1.6038B-1(f)(1)(ii).  
 17 IRC § 6038B(c)(3); see also Treas. Reg. § 1.6038B-1(f)(1)(ii).  
 18 Treas. Reg. § 1.6038B-1(f)(4). For more information about “reasonable cause,” see Treas. Reg. § 1.6038B-1T(f)(3), or the text accompanying footnotes 18-19 *infra*; see also IRM 20.1.1.3.2 (11-25-2011) (“Reasonable cause is based on all the facts and circumstances in each situation and allows the IRS to provide relief from a penalty that would otherwise be assessed. Reasonable cause relief is generally granted when the taxpayer exercised ordinary business care and prudence in determining their tax obligations but nevertheless failed to comply with those obligations.”)  
 19 Treas. Reg. § 1.6038B-1(f)(2)  
 20 Treas. Reg. § 1.6038B-1T(f)(3)(i)  
 21 Treas. Reg. § 1.6038B-1T(f)(3)(ii)(A)  
 22 *Id.*  
 23 It is of note that this filing requirement applies to U.S. persons who are required to file IRS Forms 5471, Information Return of U.S. Persons With Respect To Certain Foreign Corporations, or 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships.  
 24 See Announcement 2004-4, 2004-4 C.B. 357; IRC §§ 6011, 6012, 6031, 6038.  
 25 Instructions to Form 8858 (Rev. December 2013), available at <http://www.irs.gov/pub/irs-pdf/i8858.pdf>; see also Treas. Reg. §§ 301.7701-2 and -3.  
 26 See Instructions to Form 8858 (Rev. December 2013) (“A \$10,000 penalty is imposed for each annual accounting period of each CFC or CFP for failure to furnish the required information within the time prescribed.”), *supra* note 24; see also IRC § 6038(b). These penalties also apply to any information required to be furnished in section § 6038(a) of the Code (name and principal place of business, undistributed earnings, balance sheets, certain business transactions, description of classes of stock, etc.)  
 27 That is, an additional \$10,000 per controlled-foreign corporation or partnership for every 30 days after the 90-day period has expired, not to exceed \$50,000. IRC §§ 6038(b)(2), 6679(a)(2).  
 28 IRC § 6038(c); see also Instructions to Form 8858 (Rev. December 2013), *supra* note 24.  
 29 See *supra* notes 17, 19-20 and accompanying text.  
 30 31 U.S.C. § 5316; FinCEN Form 105 (March 2011), Report of International Transportation of Currency or Monetary Instruments, available at [http://www.fincen.gov/forms/files/fin105\\_cmir.pdf](http://www.fincen.gov/forms/files/fin105_cmir.pdf)

31 FinCEN Form 105, *supra* note 29.  
 32 *Id.*; see also Currency and Foreign Transaction Reporting Act, 31 U.S.C. § 5316.  
 33 *Id.*; 31 U.S.C. § 5316(b).  
 34 FinCEN Form 105, *supra* note 29.  
 35 *Id.*; see 31 U.S.C. §§ 5321 (civil penalties), 5322 (criminal penalties).  
 36 *Id.*; see also 31 C.F.R. § 1010.820; 31 U.S.C. § 5322 and 31 C.F.R. § 1010.840.  
 37 Basic International Tax Compliance, available at: <http://tinyurl.com/lkrbdxw>

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