REVISED EDITION

2016 U.S. TAX GUIDE

FOR

- ✔ U.S. EXPATS
- ✔ GREEN CARD HOLDERS
- ✔ NON-RESIDENT ALIENS

IN USER-FRIENDLY ENGLISH!

BY

THE GERBER & CO. TAX TEAM

GERBER & Co. CPAs

www.GerberCo.com

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CAUTION:

NOTHING CONTAINED HEREIN SHALL CONSTITUTE THE GIVING OF TAX OR LEGAL ADVICE.

Check with your tax advisor before acting on any information contained in this guide.

The material is general in nature and may not be applicable to your situation. It may contain inadvertent errors. Regulations often change.

We provide no assurance that this information is complete, accurate or current.

NOTE TO READERS OF EARLY 2016 EDITION:

FOR THIS EARLY EDITION, SOME REFERENCES THAT FOLLOW ARE STILL IN THE PROCESS OF BEING UPDATED FROM 2015 TO 2016.

WHAT IS INCOME?

This is our take – our 'real' executive summary of the U.S. tax system as it applies to you – the person living outside the U.S. who may or may not owe any tax to the IRS but who is subject to a whole lot of penalties if he or she is responsible for filing an annual tax return but is not doing so…..or is not doing it correctly.

There are actually three sections, here: an overview of what is income and the categories you might fall under for reporting that income; a calendar of your tax filing deadlines for 2015; the 'working basics' for U.S. tax filers living overseas.

Yeah, you can skip the first two parts if you want but really, there's not that much reading, so go ahead and skim through the preliminary stuff – you are really better off doing so! It's just about 2,000 words, and this brief section explains what the IRS considers income and the categories under which you the tax filer fall and thus, how that income is treated. Yes, it is a convoluted process but if you believe in the 'cover your ass' doctrine, then read this 'prelude' and …..CYA! And go online, too!

The online stuff: **GO TO THE IRS WEBSITE: www.irs.gov !** Don't just take our word for it – this is where the IRS wants you to go to learn about what you are responsible for. See it for yourself….try it…..and then come back to this book as it'll be a whole lot easier to understand! There's an awful lot that you will find in the IRS site - some say that there's too much and thus too difficult to navigate.

Anyhow, now that you've been thoroughly confused, here's what you really need. Yes, sir, folks, here it is, the list of what you have to declare as taxable income - at least, according to the IRS, almost (but not quite) using their very own words:

- All wages, salaries and tips, no matter where from
- Taxable interest (yes, there is a non-taxable variety, as well.....)
- Dividends - both qualified and not qualified (a lower tax rate for the latter)
- State tax refunds- this only applies if you itemized your deductions last year
- Alimony received

- Self-employment, sole-proprietorship business income or loss
- Capital gains or losses (maximum loss: $US3,000 after you've offset all of your gains)
- Other gains (the capital gain laws are complicated!)
- IRA distributions
- Taxable portion of pensions or annuities
- Rental real estate (or loss), royalties and a whole slew of K-1 reporting
- Farm income or loss
- Social security benefits
- Other income (but losses, too: this is where you offset your foreign earned income with your foreign income exclusions.)

That's it! All of the above is added up to become your ***total income***, which, if you have any, you have got to report it. If you don't have any, you don't have to report it ***(unless your gross income is over $US 9,750, as a single person, for 2012).***

Then there are various adjustments you can use to further reduce total income to arrive at what the IRS calls your ***Adjusted Gross Income*** from which you either itemize your deductions or take a standard deduction. Frankly, most expats take the standard deduction, accounting for all of their excludable housing expenses on the form 2555 they file. The Foreign Earned Income Exclusion, Form 2555, is ONLY applicable to expats, but that's why you are reading this, in the first place! - read on for further details...and remember, both Form 2555 and the 'lite' edition of this form, Form 2555EZ have their URLs listed within this book, enabling you to go directly to the IRS website to download these forms and their instructions – assuming, of course, that you are reading this while you are online……otherwise, simply remember www.irs.gov - hey, that's an easy site to remember!

And now we come to the classifications under which you fall for tax reporting purposes. There are four categories into which you basically 'fit' and these categories each determine the amount of your standard deduction.

- **MFJ - Married Filing Jointly, or QW - Qualified Widow** (hopefully, you do not come under the Qualifying Widow/Widower category but if you do, then there are tax benefits) will be able to take an additional deduction amounting to $US12,600 from your income in order to arrive at your taxable income.

- **Single Not married?** This is your category. Yes, you can still have dependents, but you would generally be filing as a single taxpayer, entitled to a $US6,300 standard deduction, half the amount that a married couple gets.

- **MFS Married Filing Separately** If your spouse is not a citizen of the U.S., then you have an interesting option vis a vis reporting responsibilities - especially if you own little but your spouse is 'loaded'. If you have a non-U.S. citizen spouse with substantial assets and income, he or she simply might not want to report to the IRS. Frankly, there are many expats or green card holders who have income producing assets and have placed those assets in spousal name to 'escape' reporting. Alarmed at putting it all in your spouse's name? Don't be: "even the things I owned were no longer mine, so long ago in an equal division of property California divorce where equal division meant that our ex got all the assets while I got all the liabilities." If you file MFS, you've got a $US6,300 standard deduction for 2014.

- **HOH Head of Household** If you have dependents living with you and are not married, there are some tax advantages and some trade-offs in filing as HOH. True, you are going to get an $US9,250 standard deduction for 2014 but in the process, you will lose the exemption for the person qualifying you to take HOH. Speak to your tax advisor about which is better for you: either HOH or MFS, if you have dependents.

O.K. After you've taken your standard (or itemized deductions if you have a large enough amount to itemize and it is to your advantage) deduction, then you can take a personal exemption for you and an exemption, as well, for all those who qualify as your dependents for whom you list both names, relationship and either Tax Identification Number - ***TIN*** - or Social Security Number - ***SSN***. If you do not have that number available and you are liable for taxes, the IRS will not allow you the exemption without getting that number....so you'd better apply for one! Go to the IRS site and download Form W-7 and the instructions for that form – you're going to have to file this form and commensurate back up papers, along with your tax return for the year to a 'special' address in Philadelphia, PA to get that TIN. A special word of advice: The IRS loses things – make sure you have copies of everything that you file when you apply for the

TIN – you might have to file again…and again…and again. Alas, the tax bureaucracy in the U.S. is not what it might have previously been – papers filed get lost far more frequently than the IRS will ever willingly admit!

Aha! We've now arrived at your taxable income.....now you have to compare this with what your Alternative Minimum Tax - ***AMT*** - might be and you're going to have to pay the higher amount.

For an explanation of what the Alternative Minimum Tax is, go to that very specific section, right here in this our 2015 edition. We wrote a gem of an explanation for which we guarantee you this: As soon as you read it, you will understand what the AMT is....yet a week later, you'll have to re-read this, to remember what it is.....Sadly, the AMT is a tax that simply defies memory retention!

Regardless, from the this point on, there are various and sundry credits to which you might be eligible for, which will reduce your tax bill - if you owe any taxes.....and if you are a self-employed sole proprietor, reporting your income and expenses on a Schedule C, even though you may be eligible for the foreign earned income exclusion, you are going to be liable for Social Security and Medicare taxes. Thus, if you are a sole proprietorship, plan to set aside that additional 15.3 percent of your taxable Schedule C income. This social security tax obligation for the self-employed is frequently a very rude awakening for the 'uninformed'…..if you fall into this category, consider yourself forewarned!

YOUR EXPAT 2016 U.S. TAX CALENDAR:

1 January 2016 – The tax year begins for individuals who are on a calendar year (come on, now - we're all calendar year taxpayers, whether we like it or not!). The 'Entire taxable year' Begins on January 1 (which falls on a Friday in 2016). You are on a 'cash basis' for tax purposes – if you receive any income in the calendar year, you'll have to include it during that year. If you 'earned' income that you did not receive until the next year (payments that should have been made to you in 2015 that you did not actually receive until sometime during 2016?), then don't worry about that income – it'll be part of your 2016 taxable income – unless you receive a Form 1099 which includes that income…..

15 January 2016 – This date is the deadline for final payment of estimated federal income taxes for the last voucher of the 2015 1040ES.

1 February 2016 – You can 'technically' avoid that 15 January deadline for payment of estimated taxes if you actually file your final tax return and pay final taxes by 1 February. How you are going to do this, though, when the likelihood that all of the forms you are going to need to file correctly, will simply not have been issued by this date?

15 April 2016 – Ah, you've all heard of this day - it is tax day, across the land, except for Massachusetts, where they run the Boston Marathon as part of their Patriot's Day holiday, entitling you to file one day late.

Your first quarter, 2016 1040ES is due on this date

Your IRA payment just might be due by this date

Generally, this is the date for filing form 1040 unless you are on extension....gift tax returns are also due on 15 April and it is also the final date for filing an amended tax return for the third previous tax year.

15 June 2016 ***this one is important for expats!*** This day, our friends, is the deadline for filing the 2015 tax return. You'd better file it - and have proof of mailing as 'insurance', or you'd better file an extension of time through 17 October to file (and, if you have sent in a proper letter request from overseas, an additional 2 months to 15 December) You'll still have interest due and underestimated penalties if you underestimated your pre-payments and filed under extension, before your extension deadline, but you'll avoid some very costly penalties by filing your extension request -

this extension form is virtually automatically approved. Oh, you can be the first to be penalized in this instance, if your extension application is denied - but we doubt it.....! If you are a first time overseas filer, this is also the best date to file a specific form (2350) for filers who simply want to wait until they qualify under the physical presence test (we'll cover this one, later in the book!) in order to take advantage of foreign exclusions.

And...it is also the day for filing voucher #2 of the 1040ES.

30 June 2016 – Did you eFile your FinCEN114 by today? You are late, otherwise. Want to find out more? Read that part of the book explaining the world's stupidest URL – one that common sense would dictate be easy but instead, the government has given this a URL that simply cannot be memorized!

15 September 2016 – Voucher # 3, third quarter payment of your 1040ES is due, today, if you are going to owe anything for 2016 - time to pay...!

17 October 2016 – Contrary to what the IRS or your accountant might lead you to believe you definitely can file for further extension through 15 December – but you'd better do this before 17 October. Personally, we try to avoid anything dealing with tax after 17 October (because we value our sanity and, after nearly five decades of doing tax work, we really need to cut off by 17 October!!!) but the IRS will still allow you those extra two months if you file that additional extension.

31 December 2016 – The year's over - new income tomorrow? Worry about it next year!! What's this - you say that in spite of reading this you still have no idea of the tax system? Well, apparently, neither does most of America!

Why? Will it ever change?

TAX RULES APPLYING TO YOU, THE EXPATRIATE U.S. TAX FILER

O.K. Here we go: these are the rules…..the tax rules applying to you, the expatriate U.S. tax filer (the real 'nuts and bolts' reason you've probably justified buying this book). We've updated where updates are necessary. Otherwise, we left this section pretty much the same as that of last year and the year before that, etc, because it works! If it works, don't screw with it, only tweak it, as necessary, based upon current law changes, $$ changes, etc, etc, etc

Here's our 'executive summary' of the most important stuff - these are the absolute basics - at least read these because they are 'unchanging'. Yeah, some of it will be boring but if reading that boring stuff can save you some money, then read it!!

- If you are a U.S. citizen or resident alien and meet minimum income standards (anything above your standard deduction plus exemptions), then you are liable for filing an annual U.S. income tax return, regardless of where you are living or where you income is derived. If you are single, you have a 2014 standard deduction of $US 6,200 plus an exemption of $US 3,950, meaning that for all intents and purposes, if your income is under $US 10,150, you don't have to file…..but***** The United States taxes on worldwide income. You are required to file your return even though you do not owe anything. Yes, there are perks for overseas filers - there's a foreign earned income exclusion, there's also a foreign housing exclusion. Yet take a look at the costs of living overseas and in many locations where that housing exclusion is not enough. Unless you've experienced the costs of real estate outside of the U.S. it is truly difficult to conceive of how essential that foreign housing exclusion is. But our friends in Hong Kong who come from other countries don't have a foreign earned income or housing exclusion because they are not taxed on the income they earn outside of their home country.

**** Here's that 'caveat': FATCA seems to directly bypass current law with provisions that extend the statute of limitations to 6 years for 'substantial omissions'. And would you care to guess what the IRS deems to be a substantial omission? How about $US5,000 and/or 25 percent of reported income derived from offshore assets. Frankly, if the IRS sincerely believes that $US5,000 is substantial, then the U.S. economy is in far deeper a hole than any of us could have ever imagined! Yet what does that mean to you the

potential tax filer living overseas who might have under that $US 10,150 reporting threshold but over $US5,000 from overseas……are you subject to those extortion-like FATCA penalties if you don't file?

Yes, the U.S. is an 'exception' to most countries because of its worldwide taxation and filing requirements. Don't bitch and moan about it, there is nothing you can do about it. You want to file, though, because if the IRS ever inquires about where your tax returns are, before you've filed, you are likely to lose that foreign earned income exclusion and housing exclusion, making it a very costly 'experience' for non-filers!

- If you are paid by a U.S. employer, from a U.S. corporation, with an annual W-2 issued to you, you are likely going to be subject to withholding for both taxable earned income plus Social Security taxes. Based upon your overseas residency, though, you are still eligible for the foreign earned income exclusion.
- If you are not paid by a U.S. employer and expect to have a tax liability over and above your exempt earned income and housing exclusion (and we'll get to those exclusionary amounts later on), then you are going to be responsible for filing quarterly estimated tax filings and payments. If these payments are late, then you will have late payment penalties, too!
- You have an automatic extension through 15 June, just because you live outside the U.S. and you can get a virtually automatic extension of time to file through 15 October of the succeeding tax year but if you owe the IRS anything, you are going to have to pay interest to the IRS (and perhaps, underestimation payment penalties, too!). These start accruing 16 April - so you are not totally off the hook by filing extensions....You can also get an additional extension of time to file through 15 December. While this is not 'automatic', we have rarely seen anyone turned down if they apply on a timely basis for these additional two months.
- If you have a bank account overseas - and if you are living anywhere in the world, let's face it, you are likely to have a local bank account - or several - or a brokerage account overseas, the Department of the Treasury wants you to tell them about these accounts in an annual form that has to be filed by 30 June of the subsequent year for which you must eFile before 30 June 2015 for your 2014 calendar year/U.S. tax year.

FinCEN114 is the name of the form. FinCEN does not stand for 'financial center' it stands for Financial Crimes Enforcement Network. From what used to be an information return paper filed with the Detroit, Michigan IRS Service Center is now a mandatory form that can only be eFiled. If you use a Mac, you can't always access the system with

‘regularity’ because not only is FinCEN114 not readily accessible with an Apple computer but if you are in Windows, and do not use Internet Explorer, you’re going to have problems, too. True, there is marked improvement this year over last year but this, in our opinion, is still pathetically below the standards that we should expect.

If you need to find out something about the IRS, go to their site: www.irs.gov. If you need to sign up for Obamacare, go to www.healthcare.gov. Fine. You can easily remember these URLs. How about this one:
http://bsaefiling.fincen.treas.gov/NoRegFBARFiler.html.

That’s how you access and file FinCEN114!

Think you can remember this? Who is the responsible party for allowing a URL like this? How the hell can you be ‘user friendly’ and have compliance when, you make it difficult to comply - assuming, of course, that you even know that you are supposed to comply?

In essence, for every country where you have an account or accounts totaling $US10,000 or more, then all bank and brokerage names, addresses, account numbers and the highest amount, in U.S. dollar equivalent, at any one time during 2014 must be listed for that country. Yes, you can file this form late or you can file an amended return – there is a place for you to explain why you are doing this. Seriously: **File this return on time!** There really is sufficient time for you to do so…..but if you have to be late, file late!!!

If you are living outside of the U.S., married, filing jointly and your FinCEN114 shows an ‘accumulation’ of over $US400,000 you are liable for also including Form 8938 with your individual income tax return. Yes, this is a duplication of the filing you are making with FinCEN114 – only because there are different computer systems and data bases, here, and they don’t quite talk with one another – why the IRS didn’t bother to outsource this to some shop in India to get it right at the start is beyond me. Anyhow, bitch and moan while duplicating the submission of similar information – there ain’t much you can do about it.

- If you are liable as of 31 December 2014 for income tax from the foreign country you reside in regardless of whether you’ve paid it, yet, in 2014, you can actually use that amount towards computing and getting a foreign tax credit. Be aware though that you never get dollar for dollar tax credit: the proportion of foreign earned income and foreign housing exclusion to your total income in 2014 is the proportion of the taxes you paid (or are liable for) overseas that are not eligible for dollar-for-dollar tax credit!

- If you have set up a corporation as your business overseas, you are responsible for filing an annual information return, form 5471 that must be filed, annually, as part of your individual income tax return. In fact, you must file this form if you only own 10 percent of a business - this is part of 'foreign investments' that U.S. tax filers are responsible for reporting - and penalties for not filing are simple: it will cost you a flat rate, $US 10,000 that will be assessed by IRS letter if they inquire of you before you file with them. If you earn any income from that corporation, that must be reported, as well, even though it is eligible for foreign earned income exclusion. If you are self-employed and report your annual business income on a 1040 Schedule C while you will still be eligible for foreign earned income exclusion, but you will not be exempt from Social Security obligations even though your work is outside of the U.S. Likewise, if you are a partner in an overseas partnership, then you are responsible for filing Form 8865, the partnership 'equivalent' of the corporation Form 5471. Oh, what if you've got an under-10 percent ownership in that corporation or partnership but your interest in that business entity is over $U.S. 50,000? Then you have to report it on Form 8938. Alas, our tax system is not user-friendly and sadly, it appears to be getting worse on an annual basis.

- **Publication 54, Tax Guide for U.S. Citizens and Resident Aliens Abroad.** Go to the following URL: http://www.irs.gov/pub/irs-pdf/p54.pdf. The 2014 edition (for tax year 2014) of this guide became available on the IRS website, 19 December 2014. If, perhaps, the IRS took a bit more time to make this 38 page booklet a bit more user-friendly, there would not be need for me to write this book. Alas, while Publication 54 is something you really should all look at, bear in mind that it just might serve as a holistic sleeping pill.

- How long do we keep our paperwork regarding taxes? We honestly don't know what to tell you: what if a couple of years from now you discover you have omitted something important from your prior tax filings and have absolutely no alternative than to go through the Offshore Voluntary Disclosure Program? Well the extortionists who run this program (think we are going too far in saying this? Read the Taxpayer Advocate's 2015 report to Congress and tell me this in not extortion!) want 8 years of filings. That would mean tax years 2007 and subsequent. If you have good

reason for it, then save whatever you wish to save from earlier years but we think you can safely junk most of that earlier-year stuff.

That's it - these are the absolute basics.....according to us, at least.....now let us get on to some specific details - at least the details we deem important for you to know. Bear in mind that this is 'a few men's opinion' and you should rely upon more than just this - even a cursory look at both tax forms and instructions really is becoming necessary.

First, ***how to become an expat for tax filing purposes…..***

Scenario # 1: You are moving from the U.S. to some strange, exotic land

Let us suppose….You are reading this book for the first time, while you are still in the U.S. You are soon to embark on your trip overseas, to work for the first time outside of the U.S. Perhaps you are an experienced veteran of the work force, taking your specialty overseas for an international employer who has just signed you to a multi-year contract. Or perhaps you are a young professional going into the field of law or going to work for an investment banking house or perhaps you are a teacher, going to teach at an international school. Let's use the latter occupation, teacher, as an example for this scenario because those young bankers or lawyers will not have much time off to put their initial, qualifying year for foreign earned income exclusion in jeopardy.

You, the teacher, on the other hand, are more apt to screw yourself up because of a misunderstanding of the time you must be overseas during your first year overseas – a year that begins from the date of your arrival in your new place of residence through the next 365 days. For tax year 2014 – and that means 'calendar year' because the IRS operates on a calendar year reporting basis - you are entitled to a maximum of $US99,200 as foreign earned income exclusion.

If you are married and your spouse is working overseas, too, then each of you would be entitled to exclude a maximum of $US99,200 from taxable income. You cannot transfer any excess, 'unused' exclusion from one spouse to another – if two of you each earn less than $US99,200 and it is all eligible for the exclusion, then you will still have to file a tax return but you will not owe any taxes. If either or both of you have more income than the exclusion + standard or itemized deductions + tax exemptions, you are going, in essence, to be taxed at the maximum rate – and that includes all income not eligible for foreign earned income exclusion.

Tax benefits for the U.S. expat are necessary. First, the costs of living a comparable life in Hong Kong or Dubai or Singapore are at stratospheric levels compared to, say, the cost

of living in Iowa. Mind you, we have absolutely nothing against Iowa – we like the place – we spent time, two summers ago, living in Iowa City while taking writing classes at the University of Iowa (and no, we are not foolhardy to think that there ever can be a 'tax literature' genre!)!

Yet costs of life are very, very different. The average salary in mid-levels, Hong Kong, where a concentration of international expats reside is over $US 200,000 and even with that salary, life is a struggle because of the highest real estate costs and rentals in the world. Secondly, without those benefits and with the singular distinctive obligation of the U.S. expat – we seem to be the ONLY expats with an annual filing obligation - our British, German, French and Australian friends don't have to file tax returns - they do not even think about their income, their travels, their tax consequences. Their countries do not tax upon world-wide income, just the income taxed within their territory. Heck, there are no tax consequences for them as there are for us, the U.S. expat or green card holder. If tax laws became too draconian, there would be no Americans overseas to represent U.S. products, services and industry – we like our Australian and New Zealand friends but let's face it – they simply cannot do as good a job as Americans when it comes to representing America overseas! For the U.S. to compete on an international level, it needs its own citizenry representing the U.S.!

Tax home

Your tax home is usually in the vicinity of where you work. It does not necessarily have to be your family home. Your family home might be in California. You maintain that residence and have intentions of returning there, years from now. Yet that family residence is halfway around the world and as you are not living there, it is not necessarily your tax home, anymore. O.K., you arrived from San Francisco to your new home in Hong Kong on 1 August 2014. Through 31 July 2014, your tax and family home was San Francisco. To meet the requirements for excluding either a portion or the total of 5/12 (1 August – 31 December 2014) of your non-U.S. earned income, you must qualify by meeting the physical presence test for 2014.

Let us get back to that U.S. teacher, as an example. He or she came to his/her new land on or about 1 August 2014 to begin work shortly thereafter. To qualify your August – December 2014 income tax excludable for your 2014 tax return you must meet the requirements of the physical presence test for your first year. (1 August 2014 – 31 July 2015). To put it simply, you CANNOT be in the U.S. for 35 days or more during that period of time. Less is best! If you go back home over the Xmas vacation, then you'd better start counting days if your school year ends in mid-June: if you exceed your 35

days maximum before 31 July 2015, then you will be taxed in full on your overseas income – now you do not want that to happen, do you?

If you meet these rather strict requirements for the physical presence test during your first year of residency overseas, then you have a choice of either filing your tax return on time (15 April or, with automatic extension, 15 June), without being eligible for the exclusion and then filing an amended return, requesting a refund of what you earlier might have paid on your initial return when you file upon reaching eligibility. You want our advice? Unless you've got a very large withholding refund coming, then go on extension and file one return, as soon as possible, after you've reached 'eligibility'.

File for an additional extension before 15 June and then file only one return, as soon as you are formally eligible – it is a heck of a lot easier – trust me!!! Anyhow, Hong Kong teacher, file your return after 1 August 2015, with that return on extension....and it'll be a veritable 'piece of cake' for you, now and into the future! Once you've met the physical presence test requirements for 2014, if you are overseas and working for 2015, then you are then more than likely to be eligible for bona fide residency classification – and this is both a heck of a lot easier to maintain and keep within limits of – and amazingly flexible for you – especially if you are a teacher not working but entitled to spend future entire summers back home in the U.S. without jeopardizing your ability to take advantage of the foreign earned income exclusion!

The Bona Fide Residence Test

This is the other, generally easier way to qualify for the foreign earned income exclusion. It is quite applicable to situations similar to Scenario # 2, below, and is, by and large, applicable to all long-term expats and green card holders. If you are a legitimate/bona fide resident of a foreign country (or countries) for an uninterrupted period that includes an entire year, then you are eligible to use the bona fide residence test to qualify. Let's use our Hong Kong teacher as an example. Let's assume that she or he followed the initial year guidelines to qualify for 2014 under the physical presence test, and that our friendly teacher is still at the job at the end of 2015. Well for tax year 2015, because of that 'uninterrupted first year', that teacher could go back to the states for the balance of the summer, come home again for Thanksgiving and then take the Christmas holidays back home in the States with his or her family and not worry one bit about exceeding the 35 days because the ONLY thing that matters under the bona fide residence test for tax year 2015 is that you are indeed a bona fide resident! If you can afford it, take those vacations – see the world! You are not violating the conditions of bona fide residency – once you attain it, you definitely do not want to lose it!

Scenario # 2: The expat who's been overseas for years…….

At least once a year, every year, for the quarter of a century We've been working overseas, we get a telephone call from someone who was referred by a mutual acquaintance. The person calling me would sheepishly tell me that he or she has a problem. What's the problem, we ask. I haven't filed our income taxes, he or she states. How long, we ask……. Well the longest time We've ever heard, in response, has been 37 years. If you have consistently had an annual tax bill due to the IRS, you are going to have some problems and you'd best consult someone to assist you. If, on the other hand, you have been consistently earning a salary overseas that is under the yearly maximum foreign earned income exclusion – if that's your case, then no sweat – file for a few years of past due returns as well as the current year. This was the 'unofficial' way of doing things, for years. Then, ***on 18 June 2014, the IRS announced both a new, revised Offshore Voluntary Disclosure Program and, more importantly Streamlined Procedures for legitimate expatriates (with residency requirements just a bit more stringent than those one follows for the foreign earned income exclusion), with three years of tax returns and six years of FinCEN114 reporting as part of the requirements and certifying, through a new form, Form 14653, that the filer is non-willfully neglect in prior non-filings or incorrect filings. There's a whole lot more detail about this program in a separate section of this book……read it – it could be quite beneficial to you.***

If you have been around the world, living outside of the states for a while and you have a tax preparer doing your tax return for you, then it's the bona fide resident that you are, our friend, and this is the way you've been filing – even if you didn't realize that this is what your tax preparer has been listing for you, year after year after year. What's that? You don't look at the tax return that's been prepared for you? Yeah, I'd like to say: 'Shame on you!' but let's face it – very few people actually look at their tax return. This is the sad state of affairs we've come to, vis-a-vis the U.S. tax system: it is a system that has become so convolutedly impossible to understand that most filers simply sign and never look. You are signing this to be a true, complete and full return - you have a liability, if nothing else, to actually look at that bleeping return - even if you do not understand it....and if you do not understand it, then ask questions - this is part of what you have been paying for!!! You have no excuse for not looking at what you've been signing, attesting to be the truth, the whole truth and nothing but the truth…..because the penalty for not telling the whole truth could be costly….. For all intents and purposes, if you are legitimately a 'lower end' (income-wise) expat, you are fulfilling your legal responsibilities by filing an annual individual income tax return. Yet, in all likelihood, since you are overseas, you file the return by hard copy, not eFiling your return. True, in

the future, this will be changing, as all firms preparing 11 returns or over MUST eFile……unless each and every one of our clients signs a letter of understanding about the differences between eFiling and that old fashioned hard copy way. Speaking only for ourselves, we simply choose NOT to eFile either for ourselves or our clients. Call us luddites, but we would rather submit a hard copy of a return, knowing that we are aiding the process of screwing up a system that already is overloaded with far too much paper and has little capability of handling much more. Yet it is not only your patriotic duty but your legal responsibility to file, so don't sweat not eFiling (which you are compelled to do, regardless, for FinCEN114), sign and send in that hard copy of your return - and keep a copy of that return along with your with proof of mailing, because the U.S. government loses things, too – they lose things far more than they'll ever willingly admit!!

The Foreign Housing Exclusion

Not too many years ago, one had an unlimited amount that could be excluded under the foreign housing exclusion. Then Senator Chuck Grassley came along and under the Tax Increase Prevention and Reconciliation Act, limits were imposed, city by city by city, around the world. That maximum amount is allowed for verifiable rents, repairs, utilities, insurance, furniture rental and parking costs. What? You paid more than you are allowed? Tough luck! You have a limit, now, for the foreign housing exclusion. That exclusion would be the excess of all of these costs over a base amount of approximately $US15,000 – this is based upon an annual cost of living in the U.S. and to be specific, it is $US15,872 for tax year 2014 - that was deemed to be the average annual housing cost for tax payers residing in the U.S. Some people in some jurisdictions needed this exclusion for tax 'fairness' as these costs were truly part of their unreimbursed business way of life (mine to aspire to, yet never likely to attain..), part of the requirements going with that highest of levels of the biggest of the big. The tax act of May 2006 killed that…..such is life…..

It is interesting to note that neither bill that either the House of Representatives or the U.S. Senate passed, respectively, included the two items that Senator Charles Grassley, Republican of Iowa included within the conference bill which was then automatically passed by both houses of Congress and signed into law by the President. This is a truly sad commentary – we elect legislators who do not read what they vote upon, who rely upon legislative aides who do not have the time to read what is 'hidden' into many joint conference committee bills. The rider added to that bill now set limits on the maximum amount that could be excluded, based upon cost of housing, per location; and the graduated income tax, with progressive rates is, for all intents and purposes, inapplicable to those taking advantage of foreign earned income and housing exclusions: that the very first dollar over and above all valid expenses, deductions and exclusions would now be

taxed as if the taxpayer were at the 33 percent tax bracket rather than starting out at the lowest 10 percent rate and working up to the higher rates – progressive taxation is now a thing of the past for expats. And, if you lived in a high cost of living/low tax jurisdiction (ie Singapore, Hong Kong, Dubai), you, the U.S. expat, could expect to encounter some previously unseen tax problems. It is now 2015 – sadly, nothing has changed in Washington. Do you think any of the 535 Congresspersons or Senators read Hire-FATCA of 2010? Not one! That, our friends, is a very, very sad commentary about American democracy…..

The Foreign Tax Credit

Executive summary: yes, you are entitled to a credit, offsetting your U.S. income tax with foreign income taxes paid but contrary to the most widely believed misconception, you will not get dollar-for-dollar.....and you might not get any credit at all.....SO BE AWARE!!! If you have to pay taxes, a lot of taxes to the jurisdiction where you have residency, even if it is a low tax jurisdiction, you might just be able to offset some of your U.S. tax obligation through the foreign tax credit. The tax you pay must qualify as income tax (not social welfare tax) legitimately owed or paid. And rest assured, you'll definitely benefit if the foreign country where you reside taxes you at a higher rate than in the U.S. In China, for example, where there is a 45 percent maximum individual income tax, if you are earning enough to be in that bracket and paying a portion of your tax in the PRC at that amount, then you, as a U.S. expat or green card holder, will not likely have any U.S. individual income tax on that portion of your income because China is extracting more from you than the IRS is, in this instance.

Simultaneously, U.S. expats in Hong Kong – remember: one country/two systems through 2047, at which time Hong Kong's tax system will be run by the State Administration of Taxation and not the Inland Revenue Department; until
such time, though, Hong Kongers who fall under the auspices of Hong Kong law must deal with the Inland Revenue Department – they will likely face a U.S. income tax as there is a 16.5 percent individual income tax in Hong Kong – far less than that 33 percent 'entry level' U.S. tax.

FREQUENTLY ASKED QUESTIONS BY EXPATS

The IRS has FAQs for a whole lot of things. We have a question about their FAQs: How can you come up with a new program, issuing FAQs before a question has even been asked? Their FAQs are, by and large, impersonal, confusing, not user-friendly. Our FAQs, on the other hand, are the opposite!

We've spent a bit of time listing – and hopefully answering to your satisfaction - the most frequently asked questions We've encountered over the years. Does a question here fit within the things you probably should know about but never asked or researched? Quite likely. Look through this section – it might prove to be very, very helpful to you!

Where can we get good, readily available information about U.S. taxes, no matter where we are?

Where is your computer, our friend? Are you online? Then go to www.irs.gov and take a brief look at this website. Everything you conceivably would like to know (at least, the way that the IRS wants you to know it); every form and set of instructions that is currently available can be found off of this site. The site is a bountiful of item availability, though its sheer volume is also its downfall because sometimes it really is a task to find what you want – and these searches, unless you have plenty of patience, can likely end in frustration. Throughout this book, as we refer to either a tax form, the form instructions or an IRS publication, we will list the URL because while containing an abundance of information, the IRS site is too damned difficult to navigate and access – even for me!

Throughout this book, you'll see me suggesting that you look at IRS Publication 54. Yes, indeed, do so!! Look at Publication 54 – the 'official' set of guidelines for overseas U.S. tax filers – written for your benefit (if not enjoyment in reading) by your friends at the Internal Revenue Service! http://www.irs.gov/pub/irs-pdf/p54.pdf

And now…..those FAQs…..

Our spouse is not a U.S. citizen and has never lived in the U.S. How does this affect our federal tax status?

It's one thing if you lived in the U.S. and something entirely different if you reside overseas. You might file a joint tax return. If so, then you're going to have to get either a

taxpayer identification number or a social security number for your spouse if you want to be able to take an exemption for her or maintain the MFJ standard deduction. Look up Form W-7 on the IRS site for getting a Taxpayer Identification Number if your spouse is not a U.S. citizen. http://www.irs.gov/pub/irs-pdf/fw7.pdf.

On the other hand, you might choose to file as married, filing separate or head of household. Obviously these would not give you the same standard deduction as you would get if you filed married, filing jointly.....but you would not be required to list either a social security number or a tax payer's identification number for your spouse, your spouse's income would not be reported on the U.S. tax return. Yes,we do know some U.S. taxpayers (either husband or wife) married to foreign citizens who earn income that, because the expat excludes them from her/his U.S. tax return, does not include that income for tax purposes, either. But read on, later on, in a section of this book devoted to planning necessary to avoid the pitfalls and problems encountered if you are planning upon a move back to the U.S. .....!

We keep on getting threatening letters from the IRS. We answer them but they seem to ignore our correspondence. What do we do?

Once again, go to www.irs.gov and look at the home page – somewhere on that front page is a listing about the Taxpayer Advocate Service – click upon that section. We can only tell you mixed results about using that 'interface' with the IRS – it's a good idea but it has not always worked well at all.

When we depart from the U.S. with our family, we will be living overseas in a small community provided by our employer. Our employer requires this so that we can be close to work. Will this affect our income tax liability?

It might affect your taxes. There are special rules for excluding the value of housing in this type of situation. This is called 'camp' housing and is usually provided for work in remote areas where satisfactory housing is not otherwise available. Employers must meet specific requirements for you, the employee, to be exempt from showing the value of housing as income – if you are going into this situation, you should look into this.

Are all U.S. taxpayers abroad subject to the same tax rules?

No! There are numerous categories. Self-employed individuals are subject to different tax treatment than employees of foreign corporations. Employees of U.S. corporations, with W-2s at the end of the year will still have Social Security and Medicare deductions from their gross pay check. Members of the armed forces are treated differently than other U.S. government employees....and other rules apply, as well, to taxpayers living in U.S. possessions like Guam or for those working for certain qualifying international

organizations. Ah, if only it were so cut and dried and simple....alas, this is the real world and we are stuck with a cumbersome, semi-intelligible (at best) tax system. This is further 'exacerbated' because of double tax treaties with various countries. Should the tax system be trashed and redone? Absolutely! Will that ever happen? We definitely would not bet on it!! And let us not forget F(u)BAR and the FinCEN114 – if you live in the United States, do you need a separate filing for all of your bank and brokerage accounts where you live? Hell no! But if you live outside the U.S., there is much more than a better chance that you have to report all of your accounts in your new jurisdiction on a new, eFiled form that is difficult, at best, to access. Read on, our friends – there's a section of this book that covers this area.

We are a U.S. government employee. Are we affected by these exemptions and deductions when we work outside of the U.S.?

Generally, no. You are treated like all U.S. citizens living in the U.S. Some cost of living and foreign area allowances might be excludable but by and large, you're not going to get any tax advantages working overseas.

I am not employed by the U.S. government – I am not a government employee. But I do earn income from the U.S. government. Do I qualify for exclusions and deductions?

Yes!

Can I claim the housing deduction or exclusion for two foreign households if I cannot take our family to our new employment location because of adverse conditions? Can I house our family nearby so I can visit them regularly?

Yes! Under these circumstances, expenses for the second household may be included in your reasonable-foreign housing expenses.

Is it possible to use our foreign income tax as a deduction under itemized deductions instead of a credit if it would be more advantageous?

Of course you can – but you have to make that choice! Remember, the chances are that you are not going to have a large mortgage interest deduction, living overseas. Consequently, the chances of your being able to advantageously use itemized deductions over the standard deduction are going to be very difficult. And remember – you cannot claim a deduction for foreign taxes paid on the income excluded under the foreign earned income exclusion or housing exclusion. Thus, unless there are 'exceptions', plan on using the standard deduction and the foreign tax credit!

Because of the differences between the U.S. tax year and the tax year of the foreign country I currently reside in, I cannot be certain, now, that the choices I make

regarding tax credits or tax deductions are the best ones for me. Can I change our mind?

Yes you can! Simply file an amended tax return within three years of the due date of the tax return in question or within two years of the date you paid the U.S. tax.

Apart from the special exclusions for foreign earned income, will I apply the rest of U.S. tax rules the same way as I did when I lived in the states?

Alas, no. Unfortunately, areas of U.S. tax laws draw a distinction between taxpayers inside and outside of the U.S. In many cases, this is an economic disincentive to living and working abroad. For example, contributions to foreign charities generally cannot be deducted. If you own rental property overseas, you are subject to entirely different depreciation rules and regulations than you have back home in the states.

Can I pay our taxes in a foreign currency?

Sorry, friends – check or credit card, only – the U.S. government does not accept foreign currencies – and you might have difficulties, as well, with foreign cashier's checks. – if you are that Hong Kong teacher, recently moved from the U.S. – do not close your U.S. bank account – it will come in handy, in the long run!

What happens when I move back to the U.S. to reside with our non-resident, foreign spouse, who has all of the family business and investments in her/his name?

Don't walk - run - to a specialist before you decide you want to live back in the States. There are some serious tax problems you are going to be confronted with in an all too familiar scenario that has become a nightmare for many who did not plan.....!!! This is planning you need – you are going to have to pay more – a heck of a lot more – for this planning than the cost of this book!

What happens if I haven't filed in many years and I have been told that it is hell to get back into the system?

Read the section about the Offshore Voluntary Disclosure Program (which you want to avoid – if at all possible) and the Streamlined Foreign Procedures about alternative for filing the past three years tax returns and six years FinCEN114. This brand new alternative is made just for you…..but take advantage of it, if you can, before they end allowing for this!

THE FORM 1040-NR 'SECTION'

Why we never included this short nonetheless important section previously, we have absolutely no idea. Perhaps because we are now doing more Form 1040-NRs than ever, it's time to rectify that prior omission. Why the change, now? It's not just for those who have expatriated but still have investments in the U.S. but we have met more non-U.S. persons with U.S. bank and brokerage accounts who are anticipating withholding tax over and above what their actual taxes are, so they now wish to report.

On 1 December 2014, the Congressional Research Service issued a 9 page bulletin entitled "Federal Income Taxes and Noncitizens: Frequently Asked Questions". Here it is, the 8th of February when we read this bulletin and sadly have to state that not one question we assumed would be asked was asked. So you have an alternative, our friends, go to the 73 page set of instructions that accompany the six page Form 1040-NR http://www.irs.gov/pub/irs-pdf/i1040nr.pdf (finally published by the IRS on 12 January 2015) AND the form, itself (which, if this applies to you, you should look at) http://www.irs.gov/pub/irs-pdf/f1040nr.pdf .....or read on for our who, when, where, what, etc, etc, etc in much fewer words.....

- Something new regarding the ITIN – the 'Social Security Number alternative': Your ITIN will expire of you do not use it on a U.S. income tax return for any year during a period of 5 consecutive years. Once your ITIN expires, you must reapply using Form W-7 http://www.irs.gov/pub/irs-pdf/fw7.pdf regardless of when it was originally issued. The IRS will not begin deactivating ITINs until 2016.
- **Special rules for former U.S. citizens and former U.S. long-term residents**: If you renounced your U.S. citizenship or terminated your long-term resident status (i.e. Green Card), you may be subject to different rules – look at page 9 of those 73 pages of instructions to verify whether or not you might be subject to these rules.
- If you either have a Green Card or meet the Substantial Presence Test, you will have to file Form 1040, not the 1040-NR.
- How the **Substantial Presence Test** is met: if you were physically present in the U.S. for at least
    - 31 days during 2014 and

- 183 days during 2012, 2013 and 2014 using a chart with 'multipliers on page 3 of the instructions – this can have a big impact upon your taxes, so you'd best take a look at this!

- **Who must file**:
  - If you are a non-resident alien engaged in trade or business in the U.S. during 2014, you must file Form 1040-NR regardless of whether or not you had trade or business or business-source income during 2014 or your income is exempt under tax treaty – no tax if no income but big penalties unless you tell this to the IRS!
  - Here's a good example regarding who must file – direct from the middle of page 5 of the instructions: *Mary is a non-resident alien individual. The only U.S. source income she received during the year were 4 dividend payments and 12 interest payments. All payments were reported to Mary on Form(s) 1042-S. On one of the dividend payments the withholding agent incorrectly withheld at a rate of 30 percent instead of 15 percent. There were no other withholding discrepancies. Mary must report all four dividend payments. She is not required to report any of the interest payments (which are only taxable if in connection with a trade or business).* Please note – Form 1042-S has been greatly expanded for this year and is likely to be filed incorrectly, with the withholding agent withholding more than he or she (or it or they) should. This form, which you will receive, rather than prepare yourself, is 8 pages long with a 26 page set of instructions. Be prepared to 'challenge' the withholding – it's not your fault that this is happening: the penalty payments for the entity preparing this form are as bad, if not worse than the penalties you'd get, so they (the form preparers) are only covering their rear-ends!
  - Payments of gross proceeds from the sale of securities or regulated futures contracts are generally exempt from U.S. tax law (unless part of that trade or business you might be involved with). If you received such payments and they were subjected to backup withholding, specify the type of payment on line 12 of Form 1040-NR and show that amount in column (d). Be prepared to list on line 12, dear readers, because there is far more likelihood of backup withholding because of fear of FATCA!
  - **Documentation**: You must attach acceptable proof of the withholding for which you are claiming a refund. If you are claiming a refund of backup withholding tax based on your status as a non-resident alien, you must attach a copy of the Form 1099 or Form 1042-S that shows both the

income and the amount of backup withholding to the left corner of the Form 1040-NR you are filing.

- **When do you file**? If you get a W-2 with payroll tax deductions, be prepared to file by 'tax day', April 15th. Otherwise, you get that 15 June filing deadline. Page 6 of the instructions tells you where to file.

- **Dual-Status taxpayers** This applies basically to those of you who expatriated, for example, in September, 2014. Yet you had U.S. declarable and quite possibly taxable income throughout the entire calendar year. Then, guys, you are going to have to file two tax returns: the 1040 for the period you were a citizen and the 1040-NR for the time you were not a citizen. You've got to label both returns: The 1040 'Dual-Status Statement' at the top; The 1040-NR 'Dual Status Return' across the top of this return. This is what the instructions (page 7) states. Why not say the same on both? Now that, we bet, would really be a frequently asked question!

- **The Form, itself**….. Let me mention two specific areas worthy of your attention if you are going to be filing this form: firstly, take a look at page 4, Section NEC, tax not effectively connected with a trade or business. Here's where your (hopefully) gains from U.S. based investments are going to be listed. If you have a business, though, you'd best start paying closer attention to the very beginning of the form, not just page 4! AND Page 5, sections G and H. This is where you have got to list your trips and time spent in the States over the three past years. Please don't forget this aspect of being a non-resident alien – there are some weighty tax costs if you become resident!

- In summary……if you've never seen Form 1040-NR and discover that you are responsible for filing it, then be prepared to be both confused and annoyed while you are reading about your newfound tax obligations – that form and its instructions. They are (for lack of a better word) alien! Yes, you can do this return yourself…..but don't hesitate to consult a tax professional if while reading you say to yourself: "It looks like English. It sounds like English. But we'll be damned if we can figure out what it is trying to say!"

F(u)BAR & FinCEN114

Yes, you are liable for this and the penalties are stiff! That F(u)BAR form you have to file by 30 June 2015 as your calendar year 2014 report, the FinCEN114, can ONLY be eFiled. Here's the URL: http://bsaefiling.fincen.treas.gov/NoRegFBARFiler.html.

By the way – we take sole responsibility for adding that 'u' between the F and the B for FBAR…..Let's face it, you cannot pronounce the two letters FB – you need a vowel! Besides, that F(u)BAR acronym is truly fitting and proper for these regulations!

In the beginning – a little bit of history

In 2003, the IRS was given the responsibility for FBAR (Foreign Bank Account Report) enforcement. FBAR compliance rates were abysmal – initially, it was estimated that fewer than 20 percent of those responsible for reporting actually complied. Through tax year 2007, you were required to report your overseas bank and brokerage accounts to the Department of the Treasury at its Detroit, Michigan Processing Center by June 30th of the succeeding year. This was the requirement for all foreign financial accounts in which a you, a 'U.S. person' (for tax purposes) have a financial interest or over which you, that U.S. person, has signature or other authority. You did not have to report how much you actually had in the account but you did have to group each account within one of four categories:

Under $10,000
$10,000 - $100,000
$100,000 – 1 million
Over 1 million.

Well, for tax year 2008, this comfort range (surely those of us who had already lived in Asia for 18 years, who were prudent and saved had accumulated over $100,000 although, none of us likely came anywhere close to having that maximum of 1 million!) changed: specific amounts now had to be listed. Then, early in 2009, the IRS issued new rules and regulations under the Bank Secrecy Act, changing FBAR into essentially a criminal statute to apprehend and prosecute money launderers, drug dealers terrorists, legitimate tax evaders (as well as legitimate tax filers, totally unaware of the new requirements!). Henceforth and forevermore, you are now required to file, only if the aggregate amount of your accounts in any one country is over $10,000. What if you had $US9,999 in four

accounts in the overseas country you lived and worked in? Then you did not have any F(u)BAR reporting requirements.

But if you have an aggregate of $US10,000 or more, in any one country, at any one moment in time, even if it is the briefest of moments, you must list the name of your bank or brokerage house, the address of the branch you are working with, your account number and the maximum amount you had in that account, in U.S. dollars, at any one time during 2014. Failure to file is (not 'was' – this is a theoretically ongoing penalty) subject to some big time, criminal and civil penalties. Debit or prepaid credit cards are considered as financial accounts for filing purposes and the definition of 'signature or other authority' now encompasses the ability to indirectly exercise this authority, even in the absence of written instructions.

The revised instructions also provide that foreign individuals doing business in the United States may be required to file an FBAR. we say 'may be' because instructions and guidelines are at best, 'vague'. With the current 'mentality' and political climate in Washington, DC, our advice is that you file, regardless…..

Here are the items that the IRS wants you to provide information about. Disclosure rules very clearly expanded upon the old scope of reporting.

- Stocks or securities issued by foreign persons

- Any financial instrument or contract held for investment that has a foreign issuer or counterparty

- Any interest in a foreign entity. This specifically means that you are also going to have to file the annual form 5471, the information return for U.S. persons owning 10 percent or more of a foreign corporation if your own business 'owns' the bank account. We'll get to this area later on, within this book. Suffice it to say, though, there are going to be many more areas where filling one thing out within one section of your tax return is now going to start correlating to other areas of the tax return and if you are not filing for those areas, then you have some serious food for thought as we go into the new year….

- The information to be included on the statement includes identifying information for each asset and its maximum value during the tax year.

Does this mean each individual stock transaction or bank transaction? Not currently but we wouldn't be the least bit surprised to see this as a future requirement! These records must now be maintained, if not specifically listed upon Form 8938, which, seemingly duplicates the information on the FinCEN114 but then, the IRS computers have their limitations – they really cannot 'talk' with one another, so redundancy of information that has to be reported is now the rule rather than the exception. If you, the overseas filer, have a net worth of half a million, US$, then the chances are you will have to file Form 8938 with your tax return as well as eFiling the FinCEN114.

- For all other instruments or contracts, or interests in foreign entities, the information necessary to identify the nature of the instrument, contract or interest must be provided along with names and addresses of all foreign issuers and counterparties.

With the 2008 start of reporting specifics for your bank and brokerage accounts, a not-so-subtle change has taken place with the statute of limitations. Forget that old 3 year statute - there is now a 100 percent increase in the statute of limitations, at least for 2015, with Streamlined Foreign Procedure filings (covered later in this book). 2008 was the first year requiring specific information, the six-year limitation that year for assessment of tax on understatements of income attributable to foreign financial assets that could possibly apply to FBAR arrearages. It looks like FBAR is meant to be the 'Capone Act' of this century.

Long ago and far, far away, gangster Al Capone was brought down because of tax evasion. Is this the potential tax evasion trap of the future? How will the IRS trap you? It won't be from just the FinCEN114 or from the 8938 - it will now also involve 'checking (or not checking) a single box on Schedule B, Interest and Dividend Income, of the individual income tax return (or commensurate place on corporation or partnership returns), a box that asks: 'At any time during the tax year did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account or other financial account?'

If you eFile your tax return, you are automatically entering all data for the IRS to penalize you – are you really sure you want to do this job for the IRS? The IRS is taking the position that checking this box 'no', and not filing the FinCEN114 when the taxpayer should have filed an FBAR is evidence of willfulness, which warrants increased penalty assessments for FBAR violations. Let us assume that you did file your tax return without

checking the box. Assume that your 2013 return, as prepared by a tax preparer, simply left that box blank on Schedule B. Well, our friends, the three biggest U.S. tax preparation software firms we know of automatically check 'no' if your preparer leaves this blank. Perhaps you might wish to reconsider filing an amended return if you are in this category, as 'insurance' against some rather severe possible penalties.

TDF90-22.1 Report of Foreign Bank and Financial Accounts – its sudden demise…..and the birth of FinCEN114

On the first of October, 2013, the IRS announced that Form TDF90.22-1, the Report of Foreign Bank and Financial Accounts will no longer be accepted as a hard copy for filing – that henceforth FinCEN114 will replace that TDF form which was filed with the Department of the Treasury in Detroit, Michigan. Up until its sudden elimination, that form had been used for what felt like 'forever'.

There was a three page set of instructions longer and more involved than the form, itself, that one was required to submit. Here is what those instructions stated:

Each United States person who has a financial interest in or signature or other authority over any financial accounts, including bank, securities, or other types of financial accounts in a foreign country, if the aggregate of these financial accounts exceeds $US10,000 at any time during the calendar year, must report that relationship each calendar year by filing this report with the Department of the Treasury on or before June 30, of the succeeding year.....federal returns do not extend the time for filing this report. ***There is no extension of time available for filing this report. If a delinquent FBAR is filed, also attach a statement explaining the reason for the late filing. An amendment of a previously filed FBAR is accomplished by checking the 'Amended' box in the upper right hand corner of the first page of the form, making the needed additions or corrections and then stapling it to a copy of the original form.*** In other words, file the form – late – if you are late – directly according to the procedures listed within the instructions. Nothing in any printed IRS document related to this form or the requirements for the form ever mentioned penalties for not filing the form.

What you've got to provide to the IRS

Until 2008, all you had to do was check a box for the category into which you fell: account under $10,000; $10,000-100,000; $100,000-1 million…..you get the picture. That changed for 2008, with specific highest amounts being required. Still, the instructions for TDF remained unchanged for FinCEN114.

In essence, all that the IRS really wanted to know is that if you have more than $10,000 in any one country, each and every account in that country, adding up to more than $10,000 has to be reported. If, during the year you have not had $US10,000 in any one country, then you were not required to file the form.

What was required to be listed on the TDF and IS STILL REQUIRED on the FinCEN114:

- Name of bank or brokerage house
- Address of the branch where your account is held
- Account number
- The maximum amount that you had in that account, at any given time, during 2014. If there are over 25 accounts, then you do not have to list each and every one of them through eFiling but you do have to list the name and address of each financial institution involved.
- The maximum amount in any account for which you were a signer to but did not own (ie. accounts from the business you work for) , at any given time during 2014. If there are over 25 accounts, then you do not have to list each and every one of them through eFiling but you do have to list the name and address of each financial institution involved.
- Other 'general' information includes name, address, social security number and date of birth.
- Your own, separate account(s) are to be listed, first
- Accounts held jointly with someone else are listed next…..and the primary account holder of that joint account must also be listed, along with the 'usual' details
- Here's the 'ticklish one': Accounts for which you are not owner but have signatory rights over (i.e. the company you work for, the charitable organization you volunteer time to). We have clients, Americans who work for some large, international organizations, serving in executive capacity, who have had to take their names off as signatory because their

organizations objected to giving what it considered privileged information. These entities felt that it was absolutely none of the IRS's business!

Anyhow, we had a couple of clients who mailed their TDF forms to Detroit after 1 October 2013 and before the inception of FinCEN114 and they were returned – the IRS truly is not accepting those hard copy late filings any further.

Going online to eFile FinCEN114

We could not have done this throughout most of 2014 – if you used an Apple computer, you could not access this site. If you used either Google Chrome or Firefox, you could not access this site with any semblance of regularity. You had regularity and stability if you were in Windows and were using Internet Explorer. Then, you, if you had the most recent, paid-for, Adobe upgrades, had to disengage that software because FinCEN access ONLY worked with the free Adobe Reader. Yes, this was a real lousy system that apparently had not even been debugged! Now it undoubtedly works better but not all the time and not on every computer as there are still many 'program conflicts'. There is absolutely no justification for maintaining a system that works like this – it must be improved!

There is nothing as 'alienating' as a 'mandatory system whose URL you could not remember or could only access with great difficulty; with instructions that were either severely lacking or were so ambiguous that no two people would read and follow them the same way! So what about using that site during 2015?

Move over, Reality TV – here comes reality eFiling! It just so happens that we actually have a client who needs a prior year filing that once upon a time had to be made on TDF90-22.1 but now has to be filed through FinCEN114. Here goes – we're going to do that filing, now, and write up our 'real time' experiences!

Firstly, we do want to say that it is going to be a heck of a lot easier for us to do this than it will be for you, as we had a whole lot of FinCEN114s under our belt from last year. But the instructions still leave a hell of a lot to be desired.

You start off by listing a 'filing name'. No, folks, this ain't the name you file under – it is primarily for your records such that when you file it within your computer's memory, you will hopefully remember where the hell you filed it so you can attach it to the submission of FinCEN114 - we still love that name: Financial Crime Enforcement Network. Doesn't that sound like a pro-crime organization?

Then, if you are late, you have to explain why. There are two options: a) choose from the list they provide; or b) choose 'other' and then type in your explanation. Our feeling is that unless you are especially anxious for someone to look at what you've filed, that you take the former option and choose one of the pre-designated reasons.

The rest is virtually all self-explanatory. After completing it, review it, then approve use of your digital signature, save and print an extra copy and then follow the submit procedures after choosing the file you will attach with the submission form. This is the tricky part if you suffer through senior moments – what name did you use for the file and where did you file it on your computer??? Ever gone through the painful experience of not having the faintest idea what you did with the bleeping file? That's why you should write things down!!! This is one case, though, of do as I say and not as I do because we still don't always practice what we preach and we still cannot find some bleeping files on our computer!

We seriously suggest that you suffer through this and learn to do it on your own. This is a labor-intensive situation and your tax preparer is going to have to charge you far more than you'd want for something like this. That problem can only be solved if you learn to prepare this online form yourself!

O yeah, if you are in that upper financial echelon, if you are well-to-do, married, filing jointly, with over $400,000 in accounts outside of the U.S. or you are single or married filing separately, with half that amount, you are going to have to repeat yourself, listing that FinCEN114 information on form 8938, which becomes part of your tax return, which goes to entirely different bureaucracy within the same governmental taxation empire. (www.irs.gov/pub/irs-pdf/f8938.pdf.) At some stage of the game, the IRS computers are going to correlate similar data that should be contained in different forms and where variances happen, then there's likely to be a whole new system of IRS form letters developing. Gee, figuring out the IRS in this area is like trying to figure out an answer to a multiple choice question for your drivers license renewal – without having read your license rules of the road for a couple of decades! We can only advise you about the new filing requirements and warn you that when in doubt, file those multiple forms, just to cover your rear-end!

…..And let us not forget those grand, glorious, awfully humungous F(u)BAR penalties!

Penalties - Boy oh boy oh boy are there ever some penalties – We're going to repeat ourselves throughout this book regarding penalties – they are severe and it is our job to

make you aware of what you are liable for if you do not comply. So read on, our friends, about those F(u)BAR related penalties here and later on, within the penalties essay, where you can see all those bleeping, confiscatory penalties in one place!!!

- Failing to make the required disclosures are subject to a $US10,000 penalty for the tax year. This is the broad, 'general' penalty. Then there are additional penalties which may also apply….

- If non-payment continues beyond 90 days following the IRS mailing of notice of penalty, the penalty increases by $US10,000 for each 30-day period or fraction thereof, up to a $US50,000 maximum for one taxable period. As an example: An individual who postpones remedial action until the 181st day is subject to the $US50,000 maximum penalty: The $US10,000 base amount plus $US30,000 for the three 30-day periods, plus $US10,000 for the fraction of a 30 day period following the lapse of 90 days after the noncompliance notice was mailed. Isn't this overdoing it?

- To the extent the IRS determines that the individual has an interest in one or more financial assets, but the individual does not provide enough information to enable the IRS to determine their aggregate value, the identified foreign financial assets' aggregate value will be presumed to exceed $US50,000 for penalty assessment purposes. Did you ever think that under U.S. law, you'd be presumed guilty until you prove your innocence?

But wait, there's more! Other penalties include one that is going to be assessed under Sec 6662 of the Internal Revenue Code. This one imposes a 40 percent penalty on any understatement attributable to an undisclosed foreign financial asset. This includes: foreign corporations; foreign-owned corporations; foreign financial assets; foreign partnerships and foreign trusts. For example: If a taxpayer fails to disclose amounts held in a foreign financial account, any underpayment of tax related to the transaction that gave rise to the income would be subject to this penalty, as would any underpayment related to interest, dividends or other returns accrued on these undisclosed amounts.

FATCA

The Foreign Account Tax Compliance Act is, in our opinion, one of the dumbest things the U.S. Congress has ever passed. It was ill conceived, no legislator did any research on it and no thought was given, whatsoever, to the consequences that it would generate. Just how disastrous is it? Read this section and see – yes, this is, in essence, our substantiated (full of facts that the IRS doesn't always tell you about), anti-FATCA editorial!

But first, here is a wonderful, cynical, two paragraph 'executive summary of FATCA that was sent in, anonymously to Tax Analysts (We've been writing for them for over a decade) and was published during 2012, it is written in the 'voice' of either a legislator or IRS executive and, two years hence, definitely proves the test of time!:

"In our attempt to ferret out U.S. tax dodgers with foreign accounts, we are using the only leverage we have, which is to threaten to impose 30 percent withholding on all U.S. source payments to foreign companies unless they fess up and disclose all of their U.S. beneficiaries. Further, we are going to coerce foreign countries to enter into treaties facilitating this disclosure by threatening to impose Byzantine regulations on their local financial institutions if they don't.

We realize that the net result will be that tax dodgers with foreign accounts will simply move their accounts to banks in countries that don't enter into Disclosure Treaties and that don't have U.S. source income, so the net result will be to impose our massively complex regulations only on legitimate U.S. and foreign taxpayers. We recognize that this result will dramatically reduce foreign investment in the United States in a time when it is desperately needed and will add untold complexity to a world of increasing globalization, but we had to do something in response to news articles on some unreported foreign accounts."

FATCA is the Foreign Account Tax Compliance Act - actually the HIRE-FATCA Act, enacted by Congress and signed by President Obama on 18 March 2010. Yes, that is correct – in one day, in hours, in fact, a large piece of legislation that should normally take days, if not weeks to review in order to pass judgment upon was enacted. No member of Congress - both the entire membership of the U.S. House of Representatives and the U.S. Senate, read the blasted thing – but they still voted overwhelmingly in favor of it.

Both houses of Congress have their own approach towards legislation - much of it dependent upon pleasing the lobbyists who provide the money for being re-elected - money - that is the mother's milk of politics. What emanates out of each house is a separate piece of legislation for which a Conference Committee is set up to reconcile that which will finally be enacted. Rarely do conference committee members (senators and congressmen/women) get involved in this process, which is left to the staff of the chairperson of that committee.

FATCA was passed on the IRS's premise that each year the United States loses an estimated $U.S. 100 billion in tax revenue due to offshore tax abuse. Does FATCA make a dent in that lost revenue? Not really – read on and we''ll explain more in just a bit…..

This is what came out of that committee in 2010. This is what FATCA does; this is what it imposes:

FATCA imposes a 30 percent withholding tax on the U.S. income of foreign banks or investment houses that fail to identify U.S. accounts, the owners of the U.S. accounts, the Social Security or tax identification numbers of the owners, or their assets to the IRS. Implementation of the bank's recording of U.S. activity is already under way, with the IRS signing Intergovernmental agreements with close to 100 jurisdictions, worldwide. Here's our 'big 10' list of the ten things we think you should be aware of about FATCA:

1) What FATCA means, in essence, is that let us say you are an expat living in France, with a bank account at Credit Agricole. Now that is a national bank in France. Presumably, that bank, an international institution, has banking facilities in the U.S. and likewise, has investments in U.S. equities and/or bonds as part of its diversified investment asset portfolio. The U.S. government has now called upon Credit Agricole, to keep detailed records for all it its 'U.S. person accounts' and to supposedly issue a 1099 or its approved equivalent, starting in 2015. And what if it does not? Then the U.S. government, for those countries or foreign financial institutions with whom no agreement has been signed, is simply going to take 30 percent of that institution's U.S. income as its penalty. The IRS won't of course, because there is a 'blanket agreement' that has been signed between the U.S. and France. What if you live and bank in a jurisdiction without agreement? Some banks have already stated that they will comply, regardless of whether or not their country has signed an agreement. Others, the majority of foreign financial institutions throughout the world, have not yet done so - take China, for instance. The PRC State Administration of Taxation and the IRS were supposed to have signed an agreement in December, 2014.

   They have not. The probable reason is reciprocity: The IRS promised that U.S. banks would be happy to reciprocate and provide information to other jurisdictions regarding

their nationals with bank accounts in the U.S. Only no one ever asked the U.S. banks what they think about this and they are fighting this in an all-out effort as they have simply no idea who is not a citizen of the U.S. Our client lists on his tax return PRC accounts to comply with that trap the IRS is attempting to 'hang' expats on at the bottom of the Interest and Dividend Income schedule (1040 Schedule B) on our tax return as well as the FinCEN114, that notorious F(u)BAR report which, if the Criminal Investigations Division of the IRS has its way, would become a real revenue producer because of the penalties it assesses under voluntary compliance initiatives. Anyway, were it not for our reporting this account, voluntarily, there is no way the IRS would ever know about that account – reporting compliance from China or India? It'll never happen – until such time as this whole new program is outsourced to India, where their programmers appear to be far more capable than the IRS and are more likely to get the darned thing both user-friendly and working!

2) FATCA imposes a 30 percent withholding tax on the income of those foreign corporations that do not supply the name, address and tax identification number of any U.S. individual with at least 10 percent ownership in that corporation. This is another penalty that has introduced 1 January 2015. 30 percent of what? And from non-U.S. assets? How? Does this mean that if one is a 10 percent (or more) owner in an offshore corporation but does not report that corporation on form 5471....or if one is a 10 percent partner in a partnership and does not report the year's activities, annually, on form 8865 that there will be penalties? And is there an additional penalty tacked on for not filing previous forms 8865? There are an awful lot of unanswered questions still in need of answering!

3) FATCA prohibits U.S. investors from buying or owning bearer bonds. We can easily live with this – we are not one to flaunt the law by having coupon bonds. (Aside from the fact that We've never been able to afford either stocks or bonds and never have had a brokerage account, anywhere!) But how are you going to enforce this? If someone, say me, for instance, has an awful lot of undeclared income and we purchase a coupon bond for which we have, say, our Chinese brother-in-law, hold those coupons, cashing them in as they come due, who would ever know? Yeah, it would be easy to beat this prohibition and the only reason we are this explicit in showing you how to beat it is that we never have been rich enough to do something like this.....and royalties from a book on U.S. taxation, no matter how good it may be, will never bring in sufficient revenue to buy much more than a meal at McDonalds!

   Thus we declare our royalties…..and if audited, we hope we have a compassionate auditor who does not laugh at our 'puny' writing income…..

4) FATCA gives the IRS the authority to impose penalties as high as $US50,000 on U.S. taxpayers (or filers) who own at least $US50,000 in offshore accounts or assets but fail to

report them. This is what Form 8938 is all about. Read about it within the separate section in this book because it will have such far-reaching consequences!

5) FATCA imposes a 40 percent levy on the amount of any understatement attributed to undisclosed foreign assets. Let us say that you, the tax filer simply did not know that you had a prior obligation to report on an information return your holdings. You have worked hard to accumulate $US200,000 in your Hong Kong savings account. Obviously, saving for the future is the prudent thing to do but Hong Kong is quite famous for giving next to nothing (if anything) in interest income and you never reported anything because you simply never had a tax obligation as a result of that savings account or the pittance of interest income you might have earned. Do the math.....40 percent times $US200,000 - do you now owe $US80,000 in penalties? Is this constitutional???

6) FATCA extends the statute of limitations to 6 years for 'substantial omissions'. And would you care to guess what the IRS deems to be a substantial omission? How about $US5,000 and/or 25 percent of reported income derived from offshore assets. Frankly, if the IRS sincerely believes that $US5,000 is substantial, then the U.S. economy is in far deeper a hole than any of us could have ever imagined!

7) FATCA requires shareholders in passive foreign investment companies to file annual returns. Do you have an interest in an offshore mutual fund or investment fund? If you do, even though that fund has been going through some very rough times and has not given you any income, loss or, for that matter, any reportable information to submit to the IRS, you the shareholder will, it appears, be the one to be penalized. Investment banks are now structuring their products to specifically exclude U.S. investors in order to avoid this reporting dilemma.

   See the section devoted to Form 8621 and review the mandatory ‘mark to market’ rules forcing you to declare income from your overseas investment based upon its value, not what you received (or did not receive) as income.

8) FATCA imposed Form 1099 requirements: your bank or brokerage house, outside of the U.S., is now liable (effective 1 January 2015 for future year reporting) for maintaining records for your account in order to issue, next year, a 1099 to both you and the IRS. If that bank or brokerage house does not, then it is subject to a 30 percent penalty. What will this mean for you? Well, you just might be asked to terminate your banking or brokerage account because that respective institution with whom you've been working with, all these years, no longer wishes your account because you are simply too much 'trouble' if there is to be compliance.

And you probably will not be able to resume banking and brokerage activities domestically, because, under the 'know your customer' regulations, which that U.S. based financial institution must follow, you are an 'unknown entity', no matter how much you are worth. We just had a 'substantial' client, with verification to prove worth easily attainable, turned down for a mortgage loan in the U.S. because of the 'know your customer rules'.

Unfortunately, we were there to experience that client's exasperation which quite quickly turned into rage. The fact of the matter is that we were lucky: after much exasperation, we were able to open an additional bank account in Hong Kong and, after over a year search, just found a bank in Thailand willing to accept us as a client. But a brokerage?

That's the problem – not only can you no longer find one to accept you outside of the U.S. but the U.S. brokerages no longer want to purchase stocks on your behalf if you reside outside of the U.S. In July, 2009, we were quoted in The Economist that the U.S. was building its own Great (tax) Wall, keeping people from outside the U.S. from investing in the U.S. and making it very burdensome for Americans with money in the States from transferring it overseas for investment. Alas, our comments made five years ago appear to be correct. This does not portend good things.

9) FATCA is now allowed to presume that a foreign trust has a U.S. beneficiary if a U.S. person directly or indirectly transfers property to either a trust or a presumed trust. Presumed trusts? Anything from which there might be a current, future or contingent U.S. beneficiary? Strict new rules are imposed in this 'rat trap' of an area that has its own exorbitant penalties for the sin of not filing. A $US10,000 MINIMUM failure-to-file penalty for foreign trust related information was part of that 18 March 2010 HIRE-FATCA Act.

10) Finally, the last substantial, dastardly deed of FATCA: dividend and dividend equivalent payments included in contracts paid to overseas corporations are now subject to 30 percent withholding as a tax levied on dividends paid to foreign investors. This became effective on 19 September 2010. If nothing else, this alone might give some serious food for thought by foreign investors in entities that fall under the reporting umbrella of U.S. tax law. After all, why invest in the U.S. or in a U.S. company if you are going to be taxed 30 percent, right off the top??!

O.K., you ask: how's the IRS going to enforce all of this?

Doug Shulman, past IRS Commissioner, stated, rather bluntly: "If you are a U.S. individual holding overseas assets, you must report and pay your taxes or we will be increasingly focused on finding you." Now we ask you, does that sound threatening -

especially after reading the ten points of FATCA? Much of what we write, below, is extracted from and embellished upon a 10 November 2011 article written by Los Angeles Attorney Charles P. Rettig, appearing in Tax Analysts Worldwide Tax Daily, the service for whom we also write on a monthly basis. Obviously, credit should go where it is due. You're more than welcome to look at this article in its entirety.....but would you rather we highlight it or would you rather read the full 57 pages of tax writings?

The IRS plans to go after unreported income through its announced 'plan of attack'. The IRS plans to deploy criminal and civil enforcement 'resources'. Resources? Oh, you mean IRS Revenue Officers and Agents, right? Well, in each of the last few recent years, the IRS has, in fact, included requests for budget increases to cover the costs of training personnel for these tasks and then sending them out in the field to do these investigative tasks. There are a few problems that immediately come to mind:

- Once you train these highly specialized investigative and enforcement specialists, what is to prevent them from jumping ship and going to work at substantially higher remuneration for those big law and accounting firms who are there to fight whatever tax cases develop? This is one aspect that clearly has not been thought out by the IRS. HIRE-FATCA initially gave the IRS the opportunity to hire and train 800 new specialists. We wonder how successful they've been in getting 800 specialists out there in the real world?

  What's more, we wonder how many of those 800 are still with the IRS – would anyone care to answer that??? In December, 2014, the IRS announced both that it is expanding its task force to fight international tax evasion and that it has closed its Beijing, PRC office.

  In January, 2015, it announced that it is also closing its only remaining international offices in the IRS at embassies of London, Paris and Frankfurt. We ask the logic behind the ability to expand its international investigations while simultaneously closing offices.

- On 6 January 2011, the U.S. Treasury Department introduced new Internal Revenue Service regulation 146097-09 that makes it mandatory for all U.S. banks to report interest paid to ALL non-resident aliens. This information would be exchanged with other jurisdictions - information only, no money.....The U.S. banks, as we have previously mentioned, are fighting this and to date, 4 years later, January 2015, nothing has actually transpired.

- In mid-2011, Switzerland announced updated tax treaty negotiations with both the U.K. and Germany, where non-resident Germans and Britons with

Swiss accounts, would be docked, from their respective accounts, a flat, one-time tax. Thereafter, an annual tax for interest, dividends and capital gains would be deducted from these same accounts. Switzerland would accumulate and pay to both the U.K. and Germany, a lump sum, massive, deficit reducing amount as income that the Swiss have collected for each of those respective countries.....WITHOUT SENDING INFORMATION. The Brits and the Germans want money.....to hell with the information! Guess how many jurisdictions of this world would rather have money instead of information? Towards the end of this section, we'll be discussing the OECD and Common Reporting Standards which will go into effect in 2017 as the world's alternative to FATCA.

- Financial institutions resident in FATCA Partners (Why can't they call them countries or jurisdictions? Why another legal term to clutter up our vocabulary?) will not be required to enter into FFI agreements directly with the IRS. Instead, they will be required to follow the registration guidelines in the Model Agreement. This is still something that is going to require a cost to develop this data, although there will likely be far less pressure to provide that data to one's own government than directly to the IRS. We wonder, though, how quickly these 'FATCA Partners' are gearing up for their reporting back to the IRS?

- The IRS has announced its intention of expanding treaty based information exchanges. Well let's take one major jurisdiction as an example: Hong Kong. On March 25, 2014, the IRS and Hong Kong's Inland Revenue Department signed an Intergovernmental Agreement – a 'Model Two' type of agreement requiring ALL Hong Kong banks to start submitting directly to the IRS each year banking information for all their U.S. tax filers. Well, if you are a U.S. passport holder, you've now got a problem because Hong Kong's banks, with the exception of the big banks (HSBC, Standard Chartered – you get the picture) who have the capability of providing this information, have started asking our U.S. clients to leave….that is happening, now. If you are an 'old, valued bank client', you can stay on but don't even think about attempting to open up another account – especially if it is a business account. What if you are doing business in China and doing it through a Hong Kong based intermediary, not necessarily a Hong Kong corporation? What about BVI, which for years was the offshore jurisdiction of choice for setting up a corporation. Well you can still qualify that BVI Corporation to do business in Hong Kong only you are going to have a banking problem because as a result of FATCA, there is absolutely no way a BVI corporation can currently do banking through Hong Kong.

- Pursuit of information from whistleblowers and informants. If you use a Chinese mouse trap (with the goal of capturing the rat, live) rather than a U.S. mouse trap (where rodent extermination is nasty, brutish and short.....and messy - when was the last time you cleaned off a successfully used U.S. mouse trap?) then you can put that rat to use! In July, 2008, Heinrich Kieber sold, for a reported 5 million Euros, 1,400 LGT Group accounts to Germany and then turned over 12,000 pages of U.S. account documentation from LGT to the U.S. Senate prior to getting his change of identity under the FBI's witness protection program. LGT Group is the financial services organization owned by Liechtenstein's royal family. It helped move assets around the world to evade taxes. It got caught first, prior to UBS, Credit Suisse and HSBC getting their tails in the trap..... Basically all of this simply proves something fundamental: nothing is private, anymore.....for a price, someone will always turn you in…..sadly, such is life. Will pursuit of information from rewarded whistleblowers work as a means of IRS enforcement – sadly, yes……while we will not go into details, there are some very wealthy whistleblowers who got their rewards from not necessarily ethical methods. Bribery has always existed. What else is whistleblowing than bribery?

- Panic in India: On June 30, 2014, the Securities and Exchange Board of India (Sebi) issued a circular stating that the Indian government had agreed (in substance) to a FATCA agreement but that until the formal agreement was signed, the banks and foreign financial institutions in India did not have to take any action, whatsoever. That formal agreement has not yet been signed and Sebi subsequently started to raise some questions about several issues, including the penalties being imposed on financial institutions under FATCA. On 30 December, Sebi issued a statement saying that registrations would have to be completed by January 1, 2015, virtually setting the Indian financial industry into a panic. While we won't go into the new industry that FATCA is creating because of having to get yet another U.S. government mandated number, the GINN: Global Intermediary Identification Number, having to then set up requests and audit of submitted information from those requests and then reporting them back in a format acceptable to the IRS, we will state that: a) If I were 15 years younger, I'd become a lower priced alternative to the big guys who are charging stratospheric fees for FATCA compliance – and I'd make a bleeping fortune; b) I venture to guess that few of the tens of thousands (or more) of individuals and entities that the IRS wants to have GINNs in India, in China, in Africa, etc. have gotten them and there is going to be a compliance problem because it costs too damned much for most of the world's financial entities; and c) Lest anyone forget: The U.S. government can throw around its weight – that's why there's been panic in India during the first week of 2015 or that's why the 5 January 2015 lead article of the South China Morning Post's Business Section bore the headline: "Hong Kong and

> HSBC under scrutiny as US cracks down on American tax cheats". One thing is certain: The IRS has the power to scare a hell of a lot of people. What else is it doing? Can it truly do more than scare the bleep out of you? We don't think so but we are not willing to take the chance of testing this out.

The IRS is actively 'data mining' information from cooperating taxpayers, advisers, foreign banks and bankers, all who have been either criminally prosecuted or threatened with criminal prosecution ..... AND from information revealed through voluntary disclosure programs. This is, frankly, 'anti-American'! The criminal investigations division of the IRS, in conjunction with the Department of Justice, is handling this. Why is the government treating Americans as criminals? How can the IRS seriously expect our convoluted, anything-but-simple tax system to be understood and adhered to by otherwise, very law abiding citizens or green card holders? And what about the rest of the world? If we have trouble with the complexities of FATCA, how can the rest of the world be expected to react?

Oh, you readers out there - beware! Perhaps you have never, ever been intimidated to 'rat' on someone. Yet if you are faced with what you perceive as criminal prosecution and/or back-breaking penalties unless you talk, then you are going to talk. How do you think the Drug Enforcement Agency has been so effective? No waterboarding here but the IRS will get you to reveal things using some similar methods of fear. Want to go to jail (or, as our British friends would write, gaol) or be stuck with bankruptcy-threatening fines? Well, to avoid them, the IRS wants you to talk. Yes….talk to a professional – don't represent yourself!

The lofty goals of FATCA – legislation intended to crack down on illegal tax evasion – are worthy. Yet implementation of FATCA is going to cost so very, very much and we, the citizens of the U.S. are going to get so very, very, very little in return. It is an unfair burden placed upon Americans living abroad, foreign financial institutions, US withholding agents, etc which is turning law-abiding expats to seek services at alternative banks and institutions, as their current banks and brokerage houses are turning them away. The era of 'speakeasy' banking has come and it is easy to enter. Adam Davidson, in the 24 July 2012 issue of the New York Times, wrote a wonderful article: "Our Big Fat Belizean, Singaporean Bank Account" If FATCA screws up your financial way of life, there are alternatives because the U.S. is not going to change things to the extent they think they'll be able to. FATCA will cost so much and get so little in return. It is a fraud.

It is a fraud because it is not collecting tax – it is collecting penalties. On July 16, 2014, the U.S. Taxpayer Advocate (located in conveniently located Puerto Rico by the user-friendly IRS) found that the 2009 OVD (Offshore Voluntary Disclosure) program median

offshore penalty paid by those with the smallest accounts ($U.S. 87,145 or less) was nearly 6 times the tax on their unreported income and that in addition to tax and interest, penalties of over 600 percent were assessed on these accounts The median offshore penalty for all median-sized accounts was 381 percent.

On June 18, 2014, IRS Commissioner John Koskinen stated that through the present, all of the Offshore Voluntary Disclosure programs have yielded, including penalties, approximately $U.S. 6.5 billion. Why is this amount so 'different' from that initial estimate of $U.S. 100 billion a year in lost taxes? Something is wrong here and no one really wants to admit it. Perhaps we should look a little more carefully at the total number of U.S. tax returns filed for calendar year 2013 under Section 911, the Foreign Earned Income Exclusion. It is generally held that there are 7.6 Americans living out of the United States. Add to that the others who are required to file: green card holders and those required to file Form 1040NR because they have U.S. holdings for which they are required to declare annually if not actually generate a tax liability. So how many Section 911 (Form 2555) tax returns do you think were filed for 2013? Do you believe only about 440,000…?! Use some common sense – do the maths – there's a whole lot of tax returns simply not being filed. Are the non-filers tax cheats or is it simply the fact that they do not know? And if they do not know, why doesn't the IRS improve its public relations initiatives to inform, not scare the hell out of people?

Is FATCA constitutional?

Not in our opinion…..but we're not a jurist trying this. We are involved individuals who realize the cost, both in time and money, in mounting a challenge. We do not believe that the Type One agreements between the IRS and its 'partners', where the financial institutions of the partner's banks are consolidated and reported by the partner to the IRS are constitutional. We think that these are tax treaties in disguise. Where is the advice and consent of the Senate? Thus said, what difference does it make when any constitutional challenge is likely to take years in making its ways through the federal courts. What happens in the meantime? The law is the law is the law, no matter whether you agree with it or not…..

And what has FATCA produced? Aside from the anger from many of the 7.6 million Americans who now have financial limitations that their domestic counterparts do not have, there's the rest of the world and through the OECD, The Organisation for Economic Cooperation and Development, we will see the world's 'alternative' to FATCA, a different set of reports, the Common Reporting Standard, with its own agreements, starting 2017. The rest of the world now thinks that if the U.S. can do it, they can do the same. Only the U.S. really isn't doing it – without reciprocity, it is likely that

China will never agree. With concern about both penalties and the capabilities of its banks, India has not signed on. And then there's the rest of Asia and Africa.

At the end of June, when the IRS started publishing the list of registrants for GINNs, the government ID for foreign financial institutions and related entities that were responsible for getting onboard or be penalized, a grand total of 77,354 entities registered. Frankly, this was not much at all. A half year later and the total registered (as per the 6 January 2015 International Financial Law Prof Blog of William Byrnes) has not even doubled – it stands at 147,043. If you are an FFI within a jurisdiction that has signed a Type 1 agreement with the IRS and you do not have your GINN then you are subject to that 30 percent withholding of all U.S. based funds in your name. True, you'll get a 90 day grace period but for all Type 1 or no IGA signed jurisdictions, once that grace period expires in April, the IRS is threatening to withhold. Will there be bite to the IRS's bark? How many FFIs should be registering in India? Well, according to a 7 January 2015 article in the Business Standard, as of November 30, 2014, a grand total of 442 entities have registered for their GINN. We don't know about you but we would imagine that a country (not yet a 'partner' – no IGA has yet been signed!) with 22 percent of the world's population would have a far higher number of GINN applicants than 442! According to IRS publication 5118, there are 250 recognized jurisdictions in the world of which 131 have no IGA with the IRS…..what does that tell you?

And for the Common Reporting Standards of the OECD that go full throttle 1 January 2017, 52 jurisdictions have signed agreements with another 46 agreeing to sign on. ***Of all the G20 members, 19 have agreed to the OECD plan. Want to guess which country is the only G20 member not to have agreed to what is now being called GATCA (global FATCA)? You guessed right – the U.S. of A. is alone in this crowd.***

Alex Lo, in his regular op-ed piece in the 6 January 2015 South China Morning Post, in referring to American financial hegemony, stated that FATCA exists because 'virtually all global financial institutions have U.S. dollar clearing operations in the U.S. That is part of the 'exorbitant privilege' Americans exploit to force other people and nations to comply.' True, at some point in the future, the U.S. will not be the financial power it is, now. But that will not alter much in the near to intermediate future – FATCA will not go away.

FATCA is here to stay…..but not as we currently know it. What will the changes be? Your guess is as good as mine.

One alternative is changing our tax system from one based upon citizenship to one based upon residency. American Citizens Abroad has been at the forefront of this proposal,

having presented a very carefully set out, comprehensive, revenue-neutral or possibly even revenue-positive for the U.S. Have you got a bit of time? If so, go to: https://americansabroad.org/issues/taxation/. You'll find a five page document, well written in user-friendly, common sense English in support of Residence-based taxation (RBT).

Once again, we must remind you – we hate FATCA; We hate this law and everything that goes along with it. But we do not (and never will) advocate violating any law – and we never will violate it, ourselves. The law is the law is the law, no matter how rotten it may be. At least we can be thankful to have the freedom of speech to be able to call this a real crappy law!

TAX FORMS THAT THE OVERSEAS U.S. TAX FILER NEEDS TO KNOW ABOUT

We've included URLs for each form and written some cynical commentary, too*…..! A word of warning – this section might be a boring one for you to read…..but forewarned is forearmed: you are going to be subject to some very nasty penalties if you don't file all you are supposed to file, so……read on!*

Form 1040, Schedule B, Interest and Dividends…..and Part III

What's that, you say? Why is this form specifically applicable to you the one living overseas? Because you are willfully neglect if you do not prepare Part III!

The Fourth Circuit Court of the US, in a 2012 case, upheld penalizing 'willful blindness' of the US tax payer. In the United States vs Williams, the appellate court overturned the lower level District Court by a 2-1 decision, stating that by simply signing a tax return, the US tax payer is willfully liable for everything that is both on the tax return and off the tax return, as well. That by signing the return, the taxpayer has committed him/herself to having agreed that he or she has (or should have) looked over the entire return and understands what he or she has signed. We ask those of you out there who have been using a tax preparer: do you look at each and every page of your tax return that was prepared?

A very 'common' mistake has not been to properly fill out and include Part III of Schedule B regardless of whether or not you have any interest or dividend income. There are three questions listed here: At any time during 2014 did you have financial interest or signature authority over a foreign financial account? If yes, are you responsible for filing FinCEN114 (and for which country(s). And lastly, during 2014 did you receive a distribution from or were you the grantor of or transferor to a foreign trust? This last question refers to Form 3520 for reporting foreign trusts AND any distribution you might have received.

Even though you may have complied with and filed FinCEN114 and, possibly Form 8938, you are willfully neglect, according to the Appellate Court if this form is not filled in correctly. Make sure it is! http://www.irs.gov/pub/irs-pdf/f1040sb.pdf.

FinCEN114

On 28 October 2013, The IRS updated its Manual's provisions for the FBAR program. The TDF90.22-1 is now a thing of the past and you MUST eFile FinCEN (don't you just love that name: Financial Crimes Enforcement Network?)114 through the IRS's Bank Secrecy Act E-File System.
Here's the URL:
http://bsaefiling.fincen.treas.gov/NoRegFBARFiler.html

Go the the IRS website, www.irs.gov - this is the one form you will not find on the site (if you can find it, please let me know!) because it is no longer part of the IRS's 'normal' system (is anything about the IRS truly normal?). Last year, you could ONLY access this site on a Windows operating system computer using Internet Explorer. Now, in 2015, the site works on our Mac, too…..It is time consuming. It is cumbersome, but it is the law – if you have over $U.S.10,000 at any one time, for the smallest amount of time in any one jurisdiction, then all accounts from that jurisdiction have to be reported. If your tax preparer complains about the time consumption necessary to generate this form for you and that it is going to be expensive unless you learn to do the form itself, don't complain, go online and do it. Don't be fearful of getting it wrong – if it is sufficiently incorrect, the IRS will contact you. Better to be wrong than not file at all and be subject to penalties. Of course, if you do not have nor have ever had over $U.S.10,000 in accounts where you live, you do not have to file FinCEN114!

Form 1116 http://www.irs.gov/pub/irs-pdf/f1116.pdf.

You can take advantage of both the foreign earned income exclusion and the foreign tax credit but not for the same income. This means that if you have taken both the maximum 2014 amount of $US99,200 plus, let us say, an additional net $US25,000 foreign housing exclusion, then that total of $US 124,800, taken on your form 2555, Foreign Earned Income Exclusion, for which you might have paid tax to the foreign jurisdiction where you reside and work, will not be eligible for foreign
tax credit.

Let us say, for an example that we have an expat or green card holder earning $US200,000 from a foreign firm as salary during 2014 and $115,000 of that income is excluded on the taxpayer's form 2555. As a result, 115,000/200,000 or 57.5 percent of whatever tax you pay overseas IS NOT eligible for foreign tax credit. Come on, don't look at that so negatively – the cup is half full, not empty! 42.50 percent is eligible as a dollar-for-dollar credit. If you have a tax bill overseas of $U.S.29,000, then $U.S.12,325 is going to be your dollar-for-dollar tax credit. We cannot quite say that this is not too bad, at all....rather, it is better than nothing!!

Form 8938 http://www.irs.gov/pub/irs-pdf/f8938.pdf.

This form was proposed much earlier than its 'chosen' date of introduction to the American taxpayer, nonetheless, there was a purpose behind that date of introduction: Thanksgiving Day! Let's face it, there are few days in the year when one is less likely to be looking for a new tax form. The IRS's attempt at sneaking this one past the normal 'scrutinizers' was a poor way to start things out if there was to be any hope of positive feedback. They (the IRS) did not want feedback! Yes indeed, what a poor, poor way to display ethics and integrity when dealing with U.S. tax filers owning assets outside of the United States!

This form, complete with typographical errors but perfectly incomplete without any instructions, was intended to be an actual part of the individual income tax return, mandating the listing of your foreign assets over $US50,000 in addition to the information return, Form TDF90.22-1, which, still in effect at that time, went directly to Department of the Treasury offices in Detroit, Michigan, not with your tax return to Internal Revenue Service.

The sad fact is that IRS computers do not really work well - especially when it comes to communicating directly with one another. Hence, a new form and a new computer system upon which to build a new IRS database.

If you already own our 2011 ebook edition, look at the introductory section, where we sent an email to the IRS over the Thanksgiving weekend and received an answer, that very same weekend - they were taking this form rather seriously and, because more questions were raised than they ever anticipated, the form was simply not introduced, in 2011, for 2010 tax returns.....and then, along came 28 September 2011.

On that date, a set of instructions to accompany a second draft of Form 8938, was authorized for released to a limited viewing public. Accompanying the instructions was the formal issuance of a 21 June 2011 draft of the second coming of 8938. Let's face it, the IRS was very, very serious insofar as introduction of this form as a new requirement for 2011 individual income tax returns - they wouldn't have prepared instructions, otherwise. And, in mid-December, they officially released both the form and instructions on the IRS website. And for 2012? Yet another form revision…..and the same for 2013 and for 2014? While the IRS website states that this form was available on 12 December 2014, we did not see on the IRS site until 7 January 2015 – the form alone, revised, yet again, for the fifth time. And yet, we have a form revision but no instructions, yet – the last set of instructions for the 2013 form was issued on 8 January 2014.

Being a case hardened old fart of a tax practitioner who has been doing this sort of stuff for 48 years, the first thing we look at with any new set of instructions is the estimated time burden for those filing the return. During the first week of December, we filed our annual application for a tax preparer's identification number. The last section for instructions for Form W-12 listed estimated time burden at 8 hours 25 minutes. That form took us less than a half hour to complete.

For Form 8938, at the conclusion of the 12 page set of instructions for the 2013 form, the estimated time burden for completion of the 2013 8938 at 4.62 hours. The first year of the form had time set at 1 hour and 5 minutes. We leave it to you to make your own editorial comments about the ease and friendliness of this form over its five years of usage – it is not user-friendly and is taking up more and more time…..why?

Night and day.

No we are not thinking of the Cole Porter classic. We are thinking of the difference between draft #1, Form 8938 and version 5. This latter one really 'hits home'.

We're 'flip flopping' now, between the form and its instructions in an attempt to explain why this is so important to you, the overseas filer. If this does not impact you now, it could, in the future....and what you potentially could be charged for non-compliance makes it essential that you know some of the basics! :

What are filing thresholds, below which, a Form 8938 is NOT required to be filed:

Filing status	**12/31/14 value**	**Highest 2014 value**
Unmarried-living in U.S.	50,000	75,000
MFJ - living in U.S.	100,000	150,000
Separate filing-outside U.S.	200,000	300,000
MFJ - outside U.S.	400,000	600,000

In other words, if you are married, living outside the U.S. as a bona fide resident, and your ownership in all things considered financial is under $US600,000, maximum, at any time during 2014 or under $US400,000 at December 31, 20114, for any jurisdiction where you have those assets, then you do not have a form to file - this year. But if you have any of a multitude of financial instruments that fall under a not-yet- carefully described set of instructions (can a mortgage be considered, if not now, then in the

future, a financial instrument? We don't rule this out for IRS inclusion, in the future – they (the IRS) are invasive, now and will be more invasive in the future!) If you've got a mortgage for a home in London or Hong Kong or Dubai or Singapore, the chances are that when you add that up with your other bank accounts, you are going to be over that $US600,000 highest value at any given time during any year.

What are the penalties if I do not file:

A. **Failure to file penalty** If you are required to file Form 8938 but do not file a complete and correct form by the due date of your tax return, you may be subject to a $US10,000 penalty.

B. **Continuing failure to file penalty** If you do not file a complete and correct Form 8938 within 90 days after the IRS mails you a notice of your failure to file, you may be subject to an additional $US10,000 each 30 days you are late - this maxes out at $US50,000.

C. **Accuracy-related penalty** If you underpay your tax as a result of a transaction involving an undisclosed specific foreign asset, you may have to pay a penalty equal to 40 percent of that underpayment.

D. **Fraud penalty** If you underpay your tax due to fraud, you must pay a penalty of 75 percent of the underpayment due to fraud.

E. **Criminal penalties** If you fail to file Form 8938 or report an asset, or underpay your tax, you may also be subject to criminal penalties.

F. **Extended statute of limitations** If you fail to file Form 8938 or fail to report a specified foreign financial asset that you are required to report, the statute of limitations for the tax year may remain open for all or a part of your income tax return until 3 years after the date on which you file Form 8938. Yet, later on, within the instructions, there is this following statement: "If you do not include in your gross income an amount attributable to a specified foreign financial asset and the amount you omit is more than $US5,000, any tax you owe for the tax year can be assessed at any time within 6 years after you filed your return."

G. **The effect of foreign jurisdiction laws** The fact that a foreign jurisdiction would impose a civil or criminal penalty if you disclose the information on Form 8938 is NOT a reasonable cause for not filing Form 8938. In other words, you are damned if you do and damned if you don't in several possible scenarios.

H. **Reasonable Cause** No penalty will be imposed if you fail to file Form 8938 or to disclose one or more specified foreign financial assets on Form 8938 if the failure is due to reasonable cause and not to willful neglect. The onus is on you, the filer, to prove reasonable cause but be aware - the odds of being able to prove reasonable cause are stacked against you.

What are the 'Specified Foreign Financial Assets our friends at the IRS want us to report:

A. ANY financial account maintained at any foreign financial institution.

B. Stocks or securities issued by someone other than a U.S. person or corporation.

C. ANY interest in a foreign entity.

D. ANY financial instrument or contract issued by anyone other than a U.S. person.

E. Assets held for investment - The IRS defines this as: "…You hold an asset, including stock or a partnership interest, for investment if you do not use it in or hold it for use in the conduct of any trade or business, then it must be included" - at least for the present, without any, more detailed guidelines this is what the IRS has given us Does this mean real estate? Residential real estate as well as investment real estate???

Some other things that you should be aware of:

A. a) Assets with no positive value - If the fair market value of a specified foreign financial asset is less than zero, then you have to use zero as its maximum value.

B. Other joint owners - You are required to report the maximum value of the entire jointly held asset on your Form 8938 that is to be filed with your tax return. Regardless of the value of your separate interest or the fact that your partners may not be U.S. tax filers - you have to report total value.

C. Affected individuals - Form 8938 must be filed as part of the individual's annual, individual income tax return for 'specified individuals' - If you are required to file a tax return, living overseas, don't worry - you are a 'specified individual' so you don't have to read that long, boring narrative as to what constitutes a 'specified individual'!

D. If you file any one of the following forms, you are not required to duplicate assets listed within these forms on a Form 8938:

   i. **Form 3520** - The foreign trust and foreign gift return

   ii. **Form 3520-A** - The annual foreign trust return

   iii. **Form 5471** - If you own more than 10 percent of a business, then this is the form upon which you report it, including it within your tax return. Let us say, though, that you own 1 percent of a private, foreign corporation, with your investment being half a million US $. Then you've now got to report this on Form 8938!

   iv. **Form 8621** - Own a foreign mutual fund? Chances are that you're going to have to report it with this form. Only look at the form and its instructions – we defy

you to understand either - they look like they are written in English, only there simply is no Rosetta Stone available to decipher it!

v. **Form 8865** - This is the same as Form 5471, but for partnerships

vi. **Form 8891** - This is an 'information return' for beneficiaries of 'Certain Canadian Registered Retirement Plans'. This is just one of the things that has Canadian citizens who've subsequently discovered that they have U.S. tax filing liability so totally up in arms.

E. Interest in assets held by 'disregarded entities' - Let us say that you own a business in China - but, in fact, that business is really owned through a Singapore corporation that you also own and that this Singapore corporation has been declared as a 'disregarded entity' for U.S. tax return purposes. Well, if that disregarded entity has an interest in any specified foreign financial asset then this asset must be picked up on Form 8938.

F. Interest in assets held by a grantor trust - Got a home in Hong Kong that is owned by either a disregarded entity or a trust? Guess what - it has to be picked up on Form 8938, or you are in violation of not reporting.....

G. Interests in foreign estates and foreign trusts - While an interest in a foreign trust or foreign estate is not a specified foreign financial asset, per se, if you know or 'should have known' of that interest or if you receive a distribution from the foreign trust or foreign estate, then you are considered to know of the interest and you'd better determine how you report this. Once again, see this year's book section on this particularly nasty subject!

Part II, Other Foreign Assets that were not reported elsewhere, AND Part VI the details about each of the other foreign assets not reported elsewhere- here's where it can get kind of 'complicated' – especially if you are a very minor owner of a foreign entity, i.e., you don't report your share of ownership (which could be .00005 percent of the stock of a foreign corporation) yet you are required to report the complete financial details of whole corporation. This is an invasiveness that has other jurisdictions concerned – what ever happened to privacy?

We'll end this essay about Form 8938 by repeating ourselves: nearly 5 hours just for this form? How did the IRS come to this conclusion? True, it is a definite improvement in reality reporting than that hour and 5 minutes initially mentioned within that first set of instructions but should one rely upon the IRS judgement of the time it takes? No! It is all Bull Bleep! How much money is the general public going to have to spend to prepare these forms? How much will it cost all the tax computer service bureaus to retool, yearly? Why can't the IRS spend the money, instead, to upgrade its system to let its computers communicate with one another, rather than have us prepare a form which, for all intents and purposes, amounts to little more than having us duplicate our efforts in a most confusing manner?

Form 2555 http://www.irs.gov/pub/irs-pdf/f2555.pdf. Or the Form 2555EZ http://www.irs.gov/pub/irs-pdf/f2555ez.pdf.

One of our author's background: In 1990, having made our own, personal great leap across the Pacific Ocean to begin life, anew, I resumed doing business as a corporate entity, only this time I was registered to do business in China. Our business in China was owned by a parent corporation registered to do business in Hong Kong. We reported income - whenever I had any over those first few, rather precarious years of inception, business years where everyone you speak with simply loves your business ideas but absolutely no one brings you any business until they are sure that you will make it and become a lasting entity in your new domicile. That income was reported on **Form 2555**, a three page form **'Foreign Earned Income'.** Frankly, during the first years of our business outside of the U.S., I felt far too small to bother filing a **Form 5471, the Information Return of U.S. Persons With Respect to Certain Foreign Corporations.**

I'd no longer feel that way, anymore, because there are some severe penalties imposed if the IRS finds out about your foreign business before you were planning to tell them - like $US10,000 as a flat penalty. Yes, you can fight this penalty and beat the IRS at this....about 50 percent of the time. As I really do consider taking on a 50-50 chance as being poor risk management, I do suggest that you file this form if you own over 10 percent of each and any of your business entities outside of the U.S.

Anyhow, back to form 2555: Page two of this form provides (on lines 19 through 23) space to list all sorts of income that may or may not be tax exempt in your overseas home but very much taxable in the eyes of the Internal Revenue Service. Do you have any income or benefits listed on those lines and sub-lines (13 of them)? If so, they'll add up to an amount from which there is a certain amount of meals and lodging that can be deducted in order to arrive at your **2014 Foreign Earned Income.** If this amount is over $US99,200 for 2014, then you might have taxes payable to Uncle Sam. If your Foreign Earned Income was under $US99,200, then you have to file your tax return, including Form 2555, even though you might not owe any taxes. That excess amount, over $US99,200 for 2014 might be further reduced by the foreign housing exclusion.

Let's use Hong Kong as an example. In this instance, Hong Kong is where both taxpayer and spouse are working. Let's assume that the taxpayer earns $US88,000 per year, salary , while the spouse earns $US145,000. Because of the stratospheric cost of living (and consequently, the high foreign housing exclusion) in Hong Kong, it is quite likely that these two earners outside of the U.S. will be free of having to pay any U.S. taxes, assuming no other income, but details for this still have to be reported on two form 2555s

attached to the jointly filed U.S. tax return. If the taxpayers paid their own rent of $US70,000 per year (and yes, that is a reasonable possibility in Hong Kong - the world's most expensive city - by far - to live), they would have a net of approximately $US45,000 ($US60,000 - non-deductible 15,000) housing expense as excludable foreign housing expense. Deduct that from the amount that would otherwise have been taxed and, for all intents and purposes, you'd be tax-free with the IRS. Here's how those exact numbers would work: The taxpayer's income, under the exclusionary amount is already tax-free, so the spousal Form 2555 would show $145,000 – 99,200 = $45,800 – 45,000 (approximate housing exclusion – because it is easier to work with round numbers in this example!) = $U.S.800. That's adjusted gross income from which both the standard deduction and exemptions make that an even more 'negative' amount, ...so why bother going on, any further, with the calculation. BUT, YOU STILL HAVE TO FILE THE TAX RETURN. FAILURE TO DO SO AND THE IRS CONTACTING YOU BEFORE YOU'VE COMMUNICATED WITH THEM COULD ELIMINATE YOUR BEING ABLE TO USE THE FOREIGN EARNED INCOME AND HOUSING EXCLUSIONS!

Form 8965 (brand new!!!!!) http://www.irs.gov/pub/irs-pdf/f8965.pdf.

Tax simplification? Not in the U.S. Anyone want to venture a guess how many new tax forms along with unintelligible instructions (assuming that there were any instructions, at all) during the past few years? Anyway, if you are a legitimate, living out-of-country tax filer, you are exempt from the mandatory requirements of the Affordable Care Act, Obamacare. Exempt? Yes! Exempt from having to file a new form claiming that you are exempt? Hell no! You have Part III of Form 8965 to contend with. This form, introduced to the IRS website towards the end of November, 2014 (with its instructions finally making that site, the last week of December) mandates that in order to avoid ACA penalties, you have to list each and every member of your family, their Social Security Number, the exemption code for living outside the U.S., and, if not for the full calendar year, each month that you were exempt.

Note to those of you who are returning to the U.S. after years of living away: you are going to penalized unless you comply with ACA provisions when you 're-domesticate' back in the US of A – add this to your list of things to plan for…..but first, see the section in this book about returning home…..

Form 5471 http://www.irs.gov/pub/irs-pdf/f5471.pdf.

There are three things we must comment upon prior to your reading the following 'writings and musings' about Form 5471, Form 8865, Form 8832 and Form 8858: firstly, most of the material appeared in prior editions of our book – if it works, don't

screw with it…..this stuff works! Secondly: It is boring – sorry, folks, there is very little way we can make this truly interesting. Last: before even reading about these forms, read about a Controlled Foreign Corporation and Sub-Part F income – it will be very, very costly if you fall into the Sub-Part F 'trap' without having planned for the consequences!

What is a 'Controlled Foreign Corporation'? What is Sub-Part F Income? What does it mean to you?????

Now we get to the juicy part! Here are the basic, seven rules of the game - read this slowly – they do make sense, presented in this manner...this may just help you from making any costly mistakes:

a) A foreign corporation is considered a 'Controlled Foreign Corporation' (***CFC***) if more than 50 percent of its voting power is owned by U.S. shareholders.

b) A. U.S. shareholder of a foreign corporation that is a 'Controlled Foreign Corporation' for an uninterrupted period of 30 days or more during the tax year must include in gross income its proportionate share of the CFC's Sub-part F income.

c) Income includable as Sub-part F income can be arrived at by using worksheet A of the instructions to form 5471. For all intents and purposes, these items are considered as foreign personal holding company income. They are:

Line a: Dividends, interest, royalties, rents and annuities.
Line b: Excess of gains over losses from property transactions.
Line c: Excess of gains over losses from commodity transactions.
Line d: Foreign currency gains over losses
Line e: Income 'equivalent' of interest.
Line f: Net income from a notional principal contract.
Line g: Payments in lieu of dividends.
Line h: Certain amounts received for services under personal service contracts.
Line i: Certain amounts from sales of partnership interests.

d) And there is, in essence, only one other item you have to add to the items on line a: Any U. S. shareholder's share of earnings that result from a ***CFC***'s investment in U.S. property.

e) If you've got Sub-part F income, you will have a tax bill from the IRS. On the other hand, if all your corporation does is pay your housing and your salary and whatever perks the jurisdiction you live in allows and you declare all of this on your form 2555 and hence, your tax return, then do not worry, do not fear, that 5471 is still a pain in the ass to gather information and to prepare but based upon your corporation's annual audit, the corporate financial statements are generally all you need to provide your bean counter after the first

year of doing a 5471. It is a piece of cake, if you are a small business overseas, after year 1. It is only that first year of preparing this form that is truly a pain in the rear end!

Page one of **Form 5471 - Information Return of U.S. Persons With Respect To Certain Foreign Corporations**, right at the top, right at the start – you are asked to check the box for categories you will potentially fall under. This, if nothing else, forces you to look at the instructions. ***A word of advice about the 5471 instructions:*** Page 13 of the 16 page set of instructions for this form (If you are required to file this form, then you really should look at the instructions – on the IRS website - even though they might just prove to be a remarkable holistic sleeping pill, they should be looked at – it's your liability, otherwise!) states that your business will be required to perform 129 hours in preparation for turning over everything to your accountant who will have to spend 18 hours learning and 27 hours preparing this form. Don't you believe it! True, it will take some effort on your behalf, but no where near that amount of time to provide the necessary information to whoever is preparing the 5471 for you. Yes, it is going to be more costly for paying someone to do the report preparation but that expense of getting something like this done that is cheaper than that $US10,000 penalty for not filing.

Back to the top of form 5471: You can't even get out of the opening section, Box B, before you must refer to the instructions to find out under which category you are filing. There are 5 of them listed - here they are:

Category 1 filer - There is no category 1 filer - this was repealed in a 2004 tax act. Only it would have proven too costly to retool computers and thought processes by relabeling, renaming the other four categories....so realize that there can never be a category 1 filer and while Category 5 filers are abundant, there still are only 4 categories.....for what it is worth: the 2012 form revision for Form 5471 (which is the version in use for filing 2014 tax returns) shows that category 1 has been repealed – finally, it's taken them long enough to remove that box for you to check!

Category 2 filer - Here's where things start to get a bit tricky. You do not have to be an owner of a foreign corporation to be liable for filing. Let us say that a friend, a U.S. citizen, asks you to be a director, an officer of his corporation. Guess what? You are a category 2 filer and the Internal Revenue Service is going to want some more specific detail out of you than they did on the Form 8938. This category includes a U.S. citizen or green card holder who is an officer or director of a foreign corporation for which a U.S. citizen either owns or acquires 10 percent or more of the stock. The IRS wants to find out about the company (not just its financial information) and ownership because of your involvement.

Category 3 filer - When a U.S. person (a U.S. person can be a domestic partnership, a domestic corporation, an estate or trust that is not a foreign estate or trust - and a U.S. citizen or green card holder) acquires stock in a foreign corporation which, when added to any stock previously owned on the date of acquisition of the new stock...and getting that new stock meets the ownership requirement of 10 percent or over, then you become a category 3 filer, having to report how the changes in stock ownership took place. Likewise, when a U.S. person disposes of his or her stock interest, putting them under the 10 percent reporting requirement for which they were previously over, then this too is required to be reported under Category 3 filer for the current year. Remember: Even if you fall under that 10 percent threshold, you are not necessarily exempt from still having to report your ownership on form 8938!

Category 4 filer – An author's perspective: I am a Category 4 filer. We have been in control of our foreign corporation for an uninterrupted period of at least 30 days during our annual accounting year. Most expats owning their foreign corporation fall within this category - and once you are in this 'rut', then the only things changing are the annual financial statements that have to be reported – filing this return then actually becomes a heck of a lot simpler than you'd imagine!

Category 5 filer – All the schedules required for Category 4 filers are required for Category 5 filers, so it is no big deal to list both categories if they are the ones under which you fall.

Other things you should know about the Form 5471

Dormant foreign corporations - How often have we come across it: an expat has started a corporation but doesn't use it. Obviously, after going through the expense of starting up, it is often cheaper to keep a dormant corporation, an entity set up but never used, alive, rather than let it lapse. You don't escape - you still are obligated to file a form 5471, Even with the entity as a dormant foreign corporation, some basic information is required on form 5471 but make sure to label it – in large letters at the top of page one: '**Filed Pursuant to Rev Proc. 92-70 for Dormant Foreign Corporation**' !

Disregarded entities - Forms 8832 http://www.irs.gov/pub/irs-pdf/f8832.pdf. and 8858 http://www.irs.gov/pub/irs-pdf/f8858.pdf - Ever hear of a 'Disregarded entity'? If you are a foreign corporation registered to do business in China, you may very well be 'owned' by a Hong Kong (or elsewhere) intermediary entity and if that entity is there, merely to serve as a holding corporation, it will likely be eligible to be a 'Foreign Disregarded Entity'. The instructions for Form 8858 state that 'An FDE is an entity that is not created or organized in the United States and that is disregarded as an entity separate

from its owner for U.S. income tax purposes. For the year of 'inception' of this entity, you must first file a one-time Form 8832, making this election and thereafter, file an annual **Form 8858, 'Information Return of U.S. Persons With Respect To Foreign Disregarded Entities'** Otherwise, if you do not make this election, you are liable for filing Form 5471. One other thing: if you have financial transactions with that disregarded entity, they have to be reported similarly to Schedule M of Form 5471. These have to be reported on Form 8858 Schedule M - **http://www.irs.gov/pub/irs-pdf/f8858sm.pdf.**

Want to file an amended form 1040 but this time with the previously omitted Form 5471? For 2013 tax year returns prepared in 2014, we found a larger number of amended tax returns being filed with previously omitted Form 5471 than anticipated. The IRS, in its instructions for Form 5471 specifically addresses that area - as follows (Page 4 of the instructions): *If you file a Form 5471 that you later determine is incomplete or incorrect, file a corrected Form 5471 with an amended tax return, using the amended return instructions for the return with which you originally filed Form 5471. Write "corrected' at the top of the form and attach a statement identifying the changes.'*

Frankly, there are many expats We've heard from who run small businesses overseas and have no Subpart F income – they've have never filed Form 5471 in the past because it was never previously enforced. Some of these expats are starting to file 5471s in the future but, based upon the size of their businesses and the premise 'you can't bleed blood from a dried turnip' that the IRS wouldn't look at in the first place', are applying risk management and not filing prior 5471s. What can we tell you other than our opinion that this is a lousy law that will hurt some good small foreign business American expats - but the law is the law is the law and our advice is to file this year, if not for prior years.

Above all, DON'T PANIC! - So you do your own tax returns - there is no preparer around to assist you or you feel bold enough to tackle the chore, yourself. Go ahead and prepare the 5471 - if it is seriously wrong, or if the IRS actually reviews this return and finds errors, they'll get in touch with you and be helpful in helping you correct it. This is one of the few areas of 'one on one' with the IRS where We've continually had decent vibrations!

AND FOR THOSE OF YOU WHO ARE PARTNERS IN A FOREIGN PARTNERSHIP – THERE IS FORM 8865! This form is similar to the 5471 but specifically for partnerships….. http://www.irs.gov/pub/irs-pdf/f8865.pdf .

An overseas partnership with an American tax filer as partner might have to file Form 8865. There are four categories of filers:

Category 1 Filer – This is a U.S. person who controlled the foreign partnership at any time during the partnership tax year. Control of a partnership is ownership of MORE than 50 percent interest in the partnership.

Category 2 Filer – This is a U.S. person who, at any time during the tax year of the foreign partnership owned or acquired additional ownership to become an over 10 percent owner of the partnership.

Category 3 Filer – This is a U.S. person who has contributed property to the partnership and has become, 'constructively' a 10 percent or more owner of that partnership……OR…..if the value of the property contributed amounts to more than $U.S. 100,000, then Form 8865 has to be filed as a Category 3 filer.

Category 4 Filer – Did you have a 'reportable event'? If you have acquired, disposed, or changed your proportional interest in a partnership, you just might be a Category 4 filer. You'd better check the instructions to determine if you are 'eligible' to file under this category!

Category 1 filers are responsible for filing virtually all schedules that go along with Form 8865. **Only category 1 and 2 filers get to file the K-1 for their partnership.**

What's different from the domestic partnership Form 1065? How about the filing date – for the 8865, which is whenever the return is due. Now this return, since it is filed as an attachment to your individual income tax return, could possibly be legally filed in 2015 for 2013 tax filers who've 'maxed out' with extensions. Just try that with the inflexible Form 1065, the 'domestic' partnership tax return, which is filed separately from the Form 1040 and where that 15 April filing date can only be extended 5 months by filing the extension Form 7004 before the deadline.

What happens if you are in a partnership overseas that simply cannot get its information correct – or get its information to you, the U.S. tax filing partner, for a year or two after the tax year has come and gone. Do you file late? Do you subject yourself to the severe penalties that the IRS doles out without exceptions when, in fact there should be exceptions? You could be severely penalized – this is a tough area to work with.

What's new for tax year 2014? The reference identification number was previously introduced as an optional item. This number is now mandatory and is one which you the tax filer must 'create'. This number is going to have to appear on all future filings for this entity. This is how the IRS plans to keep track of foreign entities from year to year. What

happens, though, if there are lots of similar numbers chosen by filers – does the IRS computer software have the necessary sophistication to differentiate entities? We wonder…….

What else can we say? Be aware of steep penalties if you should be a filer but are not filing……..some day – perhaps not in our lifetime but one day, nonetheless – the IRS will get it right and all of its data accumulation will work……and then that penalty will really put a dent in your future plans……

But, before we finish this section, perhaps it's time to briefly introduce you to the penultimate of confusing form and instructions (penultimate because there have got to be forms and instructions we have yet to see that make less sense than Form 8832!) that are lacking any semblance of understandability – Form 8832. This form, the Entity Classification Election, is a 'check the box' form allowing the eligible entity to elect how it will be classified for federal tax purposes as either a corporation or a partnership or as an entity disregarded as separate from its owner. Huh?

Yes, there are reasons to bring an overseas entity under U.S. tax reporting – much bigger entities than those likely owned by anyone reading this book. This is one of those forms that we advise you not to get involved with – and if you think you might have to avail yourself of any benefits that a form like this might offer you, then go to a specialist for preparation and filing of this form!

You can file if you are an eligible entity. An eligible entity is a business entity that is not included within definitions # 1 and #s 3-9 listed on page 4 of the form and instructions. Sounds vague, doesn't it?

Form 8832 is also referred to on page one of the instructions for Form 8865. What it really has to do with Form 8865, We're not really quite sure but we have always taken an approach to forms and instructions that we can't quite comprehend: if we don't understand it, we doubt that the IRS understands it, either. If the instructions make no sense, then fill in that which you think makes sense – and perhaps, add a note of query or explanation along with filing that form. Once again, if you think that you need this form, you are probably best off seeking the services of someone who understands the form.

Regardless, there are instructions that do make sense – like those of Form 8865. Pay attention to Form 8865 and its relatively understandable instructions. Be wary of getting involved in an additional form (ie Form 8832) – especially if you can't understand it!

Form 3520 http://www.irs.gov/pub/irs-pdf/f3520.pdf

An author background: When I remarried, in China, in 1993, I married into a family from an academic background, very definitely, a middle-class family. We became the 'titular' head of a Chinese family because I had far more income and continued prospects for even more, as the non-Chinese 'pioneer', living in China. To our brother-in-law, 15 years older than our wife and one who experienced the Cultural Revolution as a Red Guard, I am, now, his 'gravy train'....

I go on, in further detail, about gifting, trusts, bequests, etc, in a separate section of this book. Hey, it is a good read. Take a look at it – it might apply to you!

Suffice it to say, go to that section for the details but if all you want is the tax form, then….. **Forms 3520** and **3520-A, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Gifts** http://www.irs.gov/pub/irs-pdf/f3520.pdf and **Annual information Return of Foreign Trust with a U.S. Owner** http://www.irs.gov/pub/irs-pdf/f3520a.pdf.

The only other thing We'll mention here (and repeat ourselves in that great, separate section) is that there are two types of trust:

Grantor trusts have been set up where a U.S. tax filer was the one transferring assets but still maintains elements of control. Well that grantor will have to report income and gains on his or her individual tax return, with that income coming from either Form 3520 or Form 3520-A..

Non-grantor trusts No matter whether they are foreign or domestic, non-grantor trusts, where the grantor irrevocably surrenders assets to the trust, relinquishing all elements of control, are treated as separate entities for U.S. tax purposes. If there is a U.S. beneficiary from this type of trust, then this too, must be reported on Form 3520.

Form 8621, the "Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund": http://www.irs.gov/pub/irs-pdf/f8621.pdf.

Let us put it this way: The U.S. does not want its citizenry to invest outside of the United States. The IRS not only makes it difficult but it also taxes you, annually, on the increase in market value from one year to the next for your ownership in a Passive Foreign Investment Company. If you own an interest in a foreign mutual fund or perhaps a pension or retirement fund you'd better be aware of your obligations!

A U.S. person who is either a direct or indirect shareholder of a PFIC must file Form 8621 for each tax year if the following circumstances apply – and the consequences if the rules are not followed are severe.

So, **what is a PFIC?** There are two 'tests':

*The Income test – 75 percent or more io the entity's gross income during its taxable year is passive income; and

*The Asset test – At least 50 percent of the average percentage of assets held by the foreign entity during the taxable year are assets that produce passive income or that are held for the production of passive income – ie. money! Any foreign investment virtually falls into this category. Good luck, especially now that FATCA is here, in finding an investment fund that wants to continue seeking your investment because you are American…..

In essence, you have to file the Form 8621 if:

- The U.S. tax filer receives distributions from a PFIC
- The U.S. tax filer recognizes gain upon disposition of a PFIC
- The U.S. tax filer treats (and there is no way that U.S. tax filer can avoid this 'mandatory trap') a PFIC as a Qualified Electing Fund which must annually include in gross income as ordinary income its pro rata share of the ordinary earnings and as long-term capital gain its pro rata share of the net capital gain of the QEF
- If the U.S. tax filer does not elect to treat the PFIC as a QEF or make the mark to market election, then it will be considered an 'unpedigreed QEF' with tax consequences subject to the rules for a Section 1291 fund. And what are those tax consequences? Trust me, they are as draconian as one could possibly expect, coming from a form and instructions that look like English, sound like English but are otherwise completely unintelligible!

So how do you formally make an 'election' (some election – this is one you are ultimately 'forced' to do)? File the 7 page (including instructions) Form 8832 http://www.irs.gov/pub/irs-pdf/f8832.pdf. The only thing 'understandable' about this form is its name: Entity Classification Election. Be careful when investing outside the U.S. – it can be painfully expensive and cost you more than any potential income generated from that investment – you definitely should seek professional advice in this area!

Form 14653 – hip hip hurray – the last form in this section!! - http://www.irs.gov/pub/irs-pdf/f8858sm.pdf

Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures

This is a brand new form. It is a form to be used solely in conjunction with those filing under the brand spanking new Streamlined Foreign Offshore Procedures which We will discuss as a separate section within this book.

If you have a full, complete, licensed copy of Adobe Acrobat on your computer, you must currently disengage it and install the free, most current version of Acrobat Reader because this form can only be accessed this way. You might also have problems trying to access this form if you are using an Apple computer.

This form (where did they ever come up with that form number? Was it someone's street address?) will last as long as the Streamlined Procedures are in effect. A year from now, this form might no longer be applicable.

Banking, investing , the W-9 and W-8

The W-8 series of forms: *The ultimate goal of the IRS is to make EVERY transaction, if not a taxable one, then a reportable one for the American tax filer. As a start towards this goal, any American filer doing business outside the U.S. but with a U.S company, is going to encounter some type of 'W' form. That's what the banks send out without understanding that it just might not be correct. This essay will be an attempt not to justify these forms. Frankly, not only are they are beyond justification, they are beyond understanding!*

But first…..

International banking but with an American mandate: **Publication 5188**: http://www.irs.gov/pub/irs-pdf/p5188.pdf . This Pubication is entitled **"FATCA Metadata XML Schema v1.0**. It was issued on the 2d of January 2015. This isn't Pax Americana, it is Tax Americana – this is what our government has imposed upon every bank in the world. Go to the site. Look at it. Is your foreign bank capable of handling this? Let's take this one step further and look at the U.S. banks. Are they capable of

providing the same sort of information asked, for each of their foreign clients, for distribution to each and every one of the jurisdictions with whom the IRS has signed those FATCA inspired (imposed?) Inter-Governmental Agreements? And those American banks are certainly very attractive to foreign money. This year, on the list of the top bank secrecy jurisdictions on the world, the U.S. ranks number six!

Foreign bank reporting that can meet U.S. requirements. That's why you are having trouble opening up bank accounts outside of the United States. That is why your U.S. brokerage houses will still be glad to sell stocks from your portfolio but no longer want to purchase anything for you because you reside outside of the U.S. And let us not forget PFIC (a passive foreign investment company) – overseas investment funds no longer welcome American investors because of reporting requirements.

This too, shall pass. FATCA, in some way, shape and form will be here to stay. GATCA reporting starts 2017 and that's here to stay, too. It's a different, uncertain, new financial reporting world we live in. So let's look at W-8 to start out…..

O.K., our friends, We've got some forms for you! Two forms to be precise: **W-8BEN-E, the "Certificate of Status of Beneficial Owner for United States Tax Withholding (Entities)"** http://www.irs.gov/pub/irs-pdf/fw8bene.pdf and **W-8IOUR, "Certificate of Foreign Intermediary, Foreign Flow-Through Entity, of Certain U.S. Branches for United States Tax Withholding"** http://www.irs.gov/pub/irs-pdf/fw8iour.pdf The former was issued on the 25th of July. The latter was issued on the 3d of July. We used to be issued a one page W-8BEN but as of the first of January 2015 we have the new, enhanced 8 page W-8BEN-E and W-8IOUR as a replacements.

Both forms, issued for the first time last year but not used, were six pages long. Now they are 8 pages long. Both forms clearly project that which the IRS intends to do: collect withholding on all transactions involving foreign entities and beneficial owners involved in U.S. business, regardless of whether business was generated in the U.S. or overseas. Both forms have a page one, part one, check-the-box question 5 - FATCA Status.

There are 30 choices for checking that box for the W-8BEN-E. There are only 25 choices on the W-8IOUR. Go to the form and look at the choices.

Which one would you, the foreign entity, fall under? Would IRS instructions help? If you are a conscientious foreign entity, do you know about these requirements? If you are a conscientious foreign entity, are you willing to pay the price of either learning about the form or having a professional firm fill it out for you? Would you, the reader of this article, care to guess the answers to these questions? Or, would you care to guess whether

or not your FFI or bank will give you ‘walking papers’, telling you to go elsewhere if you are obligated to file U.S. tax returns?

In 2013, we asked three banks in three different countries about compliance. Two of those banks are rather large institutions. The third bank, while ‘small’, is a very long-established organization. We got blank stares from each of the three. We asked again, both at the end of 2014 and in 2015. We got the same, blank stares but now with recognition that this has been imposed upon them and they do not like it. We asked two of the leading investment firms in India, both of whom clearly fall under the category of 'foreign financial intermediary' about compliance, vis-a-vis investors of theirs who just might have U.S. tax filing obligations. Not only is their knowledge of these forms and potential filing requirements non-existent but upon looking at these forms, both the investment firms and the bank executives clearly indicated that they would not pay any attention to these forms. Just look at the total of FFIs from India that have applied for GINNs. The term ‘minimal’ is giving this justice….’ridiculously abysmally minimal’ is more like it!

Wake up, members of the U.S. Congress! Take heed, high-ranking officers of the U.S. Internal Revenue Service!! You are boxing yourselves into a corner from which you are going to have trouble getting out of - You are not going to be able to tax legitimately out-of-the U.S. financial transactions from financial entities who are going to follow the expanding example started by DBS Bank of Singapore and Nordea Bank of Sweden - there is going to be willful and public non-compliance of more than just swaps.

China once built a Great Wall and locked itself from the rest of the world for quite some time. The United States is shamefully building its own Great (Tax) Wall, trying to exclude Americans (both those living in the U.S. and expatriates) from investing outside the U.S. You are making it difficult for non-Americans to invest in the U.S. The Great Wall was an unmitigated disaster for China. The Great (Tax) Wall beckons the decline and fall of the U.S.

O.K., O.K., so who uses what?

At the very top of Form W-8BEN-E, you will see the following:

Do not use this form for:	**Instead, use Form:**
U.S. entity or U.S. citizen or resident	W-9
A foreign individual	W-8BEN (Individual)

A foreign individual or entity claiming that income is effectively connected with the conduct of a trade or business in the United States	W-8CEI
A foreign partnership, a foreign simple trust, or a foreign grantor trust (unless claiming treaty benefits)(see instructions for exemptions)	W-8IMY
A foreign government, international organization, foreign central bank of issue, foreign tax-exempt organization, foreign private foundation, or government of a U.S. possession that received effectively connected income that is claiming the applicability of section(s) 115(2), 501(c), 892, 895, or 1443(b) (unless claiming treaty benefits)(see instructions)	W-8ECI or W-8EXP
Any person acting as an intermediary	W-8IMY

If any of you fall into categories where you think you might be responsible for filing either Forms W-8ECI, W-8EXP or W-8CE, then run to a professional who understands these forms and file to avoid potential penalties – don't ask us – we have no idea how to use these forms or what the heck they are for……and we wonder just how many professionals working for the IRS have even seen these forms!

The W-8BEN-E has a 15 page set of instructions. The most intelligible portion of this form is at the very beginning of these instructions, under the title 'Purpose of form':

"Purpose of Form: This form is used by foreign entities to document their status for purposes of chapter 3 and chapter 4, as well as for certain other code provisions.

Foreign persons are subject to U.S. tax at a 30% rate (the foreign-person withholding rate) on income they receive from U.S. sources that consists of:

- Interest (including certain original issue discount (OID);
- Dividends;
- Rents;
- Royalties;
- Premiums;
- Annuities;
- Compensation for, or in expectation of, services performed;

- Substitute payments in a securities lending transaction;
- Other fixed or determinable annual or periodical gains, profits, or income.

That's it. That's all this form is for: to prevent your avoidance in paying taxes on that list. Ah, but why is this form going to be sent out to every US passport holder from every GINN holding FFI? Simply to cover their ass! They keep these forms and they are supposed to audit them and perform due diligence.

REMEMBER: IF YOU ARE A U.S. CITIZEN OR GREEN CARD HOLDER, YOU DO NOT FILE THIS FORM – YOU FILE FORM W-9, INSTEAD!

Where did the transaction between the foreign company and the U.S. entity that sent you this form take place? In the U.S.? Outside the U.S.? If a U.S. contract was NOT involved, it is probably not even valid for the U.S. entity to send these forms out in the first place. By and large, the company's U.S. accountant has absolutely no idea of international taxation as prescribed by the IRS. That accountant, probably to cover his/her behind, is sending these out simply to have them on record and avoid being penalized.

What if, as a conscientious citizen, you decide to read the instructions for the W-8BEN-E you will be sent and after getting totally confused by reading those fifteen pages of genuinely unintelligible instructions, you feel that you or the persons and entities you are advising should file the W-8BEN-E – stop reading the instructions and use your common sense – it probably does not apply to you in the first place. Print out a W-9, fill it out and send it to whoever incorrectly sent you one of the W-8 series of forms. You, the American tax filer are 'beneficially involved' and all you are doing is providing whoever sent you the incorrect form in the first place that your Social Security Number or Tax Identification Number is on record.

Form W-9 http://www.irs.gov/pub/irs-pdf/fw9.pdf

Don't sweat it, don't be intimidated by an ever-expanding series of forms W-8. They actually have something else in common with the scientific proof of the ever-expanding universe: both are totally unintelligible to anyone of above-average intelligence!

What if you either have to file the W-9 or are willing to file it simply to get that U.S. firm's accountant to 'shut up' about your not filing it? If you are legitimately exempt from tax withholding; if you're not going to be paying any tax attributable to this situation, anyway, then simply check the box excluding you from withholding. Don't panic!

So what happens if you were a reader who decided not to read me but to read the IRS set of instructions, instead? At the end of the IRS W-8BEN-E set of instructions they've listed the time it would likely take you to work on this form:

Recordkeeping ..... 12 hr., 40 min.
Learning about the law or the form ... 4 hr., 17 min.
Preparing and sending the form ..... 8 hr., 16 min.

See how much time you've saved by reading me, instead? And yet, if you want a good night's sleep, without interruption, then read the IRS instructions as they are, by far, the best holistic sleeping pill you ever will find!!

OBAMACARE

Obamacare (also known as the Affordable Health Care Act) - Clinton tried for universal healthcare during his presidency. He failed miserably. Obama got something through. We (the U.S.) are different than elsewhere insofar as lobbying by the medical profession, the legal profession, the insurance industry and, let us not forget, the pharmaceutical industry. We pay so much but get so little in return. Yet we've got a program which will profoundly impact all U.S. tax filers, including those living overseas who, for all intents are exempt from mandatory insurance provisions but who will have to file a brand new tax form to verify their exemption as well as be liable for the surcharges imposed upon high income earning tax filers if they fall into this bracket. Since most of you are interested in Obamacare, that comes first…..but there are some old farts out there who are either eligible, now, or are approaching retirement and will soon be eligible for Social Security – hence, comments about **Social Security and Medicare**, as well!

For better or for worse, it's going to always be known as Obamacare. It is not an entitlement program like Medicare or Medicaid or unemployment insurance. It is an attempt to expand affordable health insurance for a sizable segment of the U.S. population that previously was not covered..... it is by no means a roadway to universal coverage! It is an attempt to control medical costs, costs that seem to be skyrocketing higher than the costs of education because while higher education is not mandatory, Obamacare is a required mandate for acquisition of medical insurance. Pre-existing conditions will no longer be a barrier to insurance. In a proverbial nutshell, this act makes it mandatory that all individuals who do not qualify as 'exceptions', have health insurance this year and forevermore. Otherwise, these individuals will be penalized. Medical insurance must come from a qualified health plan set to meet government standards, where new insurance can only be acquired through an insurance exchange set up in the state where you are domiciled or, if your state has not set up an exchange, then you've got to go through www.healthcare.gov.

Each and every one of the fifty states should have its own health insurance exchange or marketplace for its own. Alas it hasn't worked out this way, yet. If you live in California, you have a California exchange from which you can choose from a choice of insurance carriers and options. Because you are a California resident, you cannot purchase your insurance from the neighboring state of Oregon. If you live in Hong Kong, though, unless you had a California residence, you would not be eligible to purchase new insurance from

the California market place - not that you might want to because if you live abroad, you are, in essence, exempt from a mandatory policy - or else, a penalty.

Remember this: Medicare is only available in the U.S. If you live outside of the U.S. and want to have Medicare coverage, you have to come back to the U.S. for all of your visits to doctors, for all hospitalizations, for any surgery.

All new and updated U.S. health plans must provide 'essential health benefits', expanding the scope of medical coverage in the U.S. These 'mandatories' are:

- Ambulatory patient services
- Emergency services
- Hospitalization
- Maternity and newborn care
- Mental health and substance abuse
- Prescription drugs
- Rehabilitative services and devices
- Laboratory services
- Preventive and wellness services and chronic disease management
- Pediatric services including oral and vision care.

The Affordable Care Act prohibits deductibles greater than $2,000 for self-coverage or $4,000 for family coverage. There will be four benefit categories of insurance sold, providing benefits based upon actuarial levels:

the Bronze plan	60% payment coverage
the Silver plan	70% payment coverage
the Gold plan	80% payment coverage
the Platinum plan	90% payment coverage

Actuarial values/levels are those measures of 'generosity' of a plan for a standard population. Thus, the cost-sharing structure may vary from one plan to another. For example, one plan may have a higher deductible than another, but compensate by having a lower coinsurance percentage once the deductible is met.

Be honest - do you really understand what that means? If not, maybe it is time to read up on things like this as it portends your future. Like it or not - sooner or later you are going to have to be far more astute as a medical/medical insurance consumer!!!

If you are going to move back to the States at some point in your life, then you'd best be aware of 'the new insurance requirements'. But what if you are temporarily back in the States for an extended period of time where your income is subject to Social Security and Medicare tax? This purely 'temporary situation' will be one that more people find themselves in than anyone can imagine - if you possibly fall into this category then you really must read on. Failure to know the basic aspects of Obamacare could mean a very annoying penalty. Before we go into any other aspect, let's look at those penalties:

Year	TAX PER PERSON	% OF INCOME	MAX. PENALTY	INCOME LEVEL
2014	$ 95	1.0%	$ 285	$28,500
2015	325	2.0%	975	48,750
2016	695	3.0%	2,085	83,400
2017	+ COSTS OF LIVING ADJUSTMENTS WILL COME INTO EFFECT FROM NOW ON			

Beginning this year - now - without a qualified exemption, you, the U.S. tax filer will be required to obtain health insurance. Failure to comply will be subject to a maximum penalty, this year, of $975. That maximum penalty in 2016, will be $2,085. Do you want to pay that? That's why we're covering Obamacare in this Supplement! All penalties will be due and payable with your annual federal income tax return, thus expanding the scope of activities in which the IRS is involved. The 2014 penalty will be due and payable 15 April 2015. There's the new Form 8965, which We've previously mentioned. You, the dweller outside of the U.S., must file for your exemption, otherwise you've got a penalty!! http://www.irs.gov/pub/irs-pdf/f8965.pdf .

The big 8: exemptions from the non-compliance penalties for Obamacare

1) You are uninsured for less than 3 months during the calendar year.

2) The lowest-priced coverage available to you would cost more than 8 percent of your household income.

3) You are not required to file a U.S. individual income tax return because your income is too low.

4) You are a Native American member of a recognized tribe or eligible for services through an Indian Health Services provider.

5) You are a member of a recognized health care sharing ministry.

6) You are a member of a recognized religious sect with religious objections to insurance, including Social Security and Medicare.

7) You are in jail.

8) You are not lawfully present in the U.S.

If your income is less than 133 percent of the federal poverty level, you are also relieved of the Obamacare penalty.

Obviously, if you currently reside in the States but are soon going to live and work outside of the U.S., you will be exempt from penalty upon inception of lawful overseas residence. It is those of you who are moving back who must be concerned! There are 12 'hardship' exemptions, as well, that will exempt you and you just might fall under one of them, although we doubt it. Still, be aware that there are potentially additional 'loopholes' for you to escape if you are trapped.....Forbes, in its 28 October 2013 edition, gave an example: A person could delay payment to their utility company, receive a shut-off notice (which is an eligible hardship exemption), pay their bill before their service is shut off, and then keep that shut off notice to get the exemption. Obviously this is carrying things to an extreme but loopholes are always going to be loopholes and are there to either take advantage of or abuse (depending upon how you look at them) and when confronted with a penalty as your only alternative, they are worthwhile to look at!

How we're gonna pay for expanded U.S. healthcare

If you are a high income earner, you will have a 0.9 percent 'Additional Medicare Tax' (AdMT) on your wages, subject to threshold filing amounts of

$250,000 for joint returns
$125,000 for the returns of those married, filing separately
$200,000 for everyone else.

For those of you getting a W-2 for wages, your employer will be deducting this amount from your gross wages.

There is a form for this tax, Form 8959 http://www.irs.gov/pub/irs-pdf/f8959.pdf It is correlated for the IRS computers with the amount entered on Form 1040, line 60, box a.

There is also a 3.8 percent additional 'net investment income tax' (NIIT) at the rate of 3.8 percent for individuals, estates and trusts. For individuals, the tax is 3.8% or the lesser of:

- Net investment income, or
- The excess of modified adjusted gross income (MAGI) over a threshold amount of:

  - $250,000 for joint returns
  - $125,000 for the returns of those married, filing separately
  - $200,000 for everyone else....except estates and trusts - they have a $11,950 threshold!

Beware: these threshold amounts are not indexed for inflation, so an increasing number of taxpayers could fall under this tax umbrella as the years go by.....and because this is modified AGI, you have to add back the foreign earned income and housing exclusions, making it quite likely that far more U.S. tax filers living outside of the U.S. are going to have an Obamacare tax, even though they do not have to meet Obamacare insurance requirements.

There are some 330 pages of new IRS regulations devoted to the Affordable Health Care Act and net investment income. This is a veritable can of worms insofar as poorly written instructional documentation is concerned. It's got to be the cause of creating a whole new cottage tax industry of specialists in this area. Why? Good Question!!!

Net investment income - what is includable/what you can deduct - is where things start to get a bit more complicated. If you fall into this category, our advice to you is that you find a specialist to help you! Once again, there is another form you are going to be required to file for this, Form 8960 http://www.irs.gov/pub/irs-pdf/f8960.pdf.

Social Security and Medicare - some thoughts on the matter for those of you within sight of those so-called 'retirement years'

O.K. This is a section that has absolutely nothing to do with filing your 2014 individual income taxes. Yet this is a section that is probably going to be more important to a target audience of readers, 55 years-old and above, in particular. Remember, this book is a tax guide, not necessarily 'income tax' but tax, nonetheless.

Social Security as well as Medicare are part of your gross payroll deductions if you are (or were) paid wages from a U.S. entity and were issued a W-2.

If you were born before 1939, your full retirement age is 65 - you can work as much as you want and collect (assuming you are eligible) from 66 years, 1 day, onwards. They changed the law in 1983 and, in essence, full retirement age is soon going to reach 67 - with it likely to go up. Thus, you should be aware of what these changes will be as you get older and there's only one way to really keep up-to-date - the internet.

The most important advice we can give you: go to www.ssa.gov !!! This is the Social Security Administration's website. It is very, very user friendly.

Let's use a hypothetical example to introduce this site and how we would suggest using it. Our hypothetical American, in this case, is 63 year-old Joe from Paris, a U.S. expat who has lived and worked outside of the U.S. for 25 years. Prior to trekking overseas, Joe worked well over 10 years for a U.S. based firm and has qualified, based upon contributions to receive both social security and Medicare benefits. 5 years ago, after years of being a bachelor, Joe married to a French wife who is 25 years his junior. Two years ago this happy couple became parents of a wonderful child.

Joe has lost touch with correspondence coming from the U.S. - he knows that he's going to be entitled to receive social security payments but has no idea of how much he will receive - or when he will receive them.....and he has absolutely no idea how to apply for social security.

Go to the website, Joe!

See the buttons at the bottom of the home page? Click on 'Retirement Estimator' and there you'll find a retirement planner to assist you in estimating your retirement benefits - either NOW, at reduced rates (and income limitations imposed upon you if you are still working) or at full retirement age of 66+.

Joe will also be pleasantly surprised to find that because he is the old fart father of a child under age 18, his child is eligible to collect educational assistance benefits through age 18 and that his wife - if she is a U.S. citizen - can also collect educational benefits for the

child as 'responsible, non-retiring parent' through their child's 16th birthday. Not only that, assuming that Joe has a wonderful life but does predecease his wife....well his wife, as per current law, will be able to collect survivor's benefits when she reaches age 60. Thus, there are very definite benefits from Social Security!

Applying for Social Security

You can apply online - the system can handle you - albeit with a bit more difficulty if you wish to receive benefits outside of the U.S. We keep a bank account in the U.S. solely for the purpose of receiving our Social Security benefits. Every few months, we transfer the funds to Hong Kong or China.

You can apply, in person - we did and it was a nightmare, sitting and waiting in Van Nuys, California. There were far too many people there - more than could be adequately handled by the staff. If you have more patience than me, then perhaps you can tolerate it - we couldn't. We have a friend who, aware of this problem, found an SSA office in the mid-west, where the officers had all the time in the world to give one on one personal assistance to our friend - the unbelievable variety of service that we frankly, have become quite unaccustomed to receiving from any bureaucratic office of any jurisdiction, anywhere!

There are professionals out there who will charge you a reasonable fee to stay on top of the system for you and get you into the system, painlessly. We opted for this and we am so happy that we did!

Medicare

There are 4 parts to Medicare.

Part A - Hospital insurance. If you are fully paid into the system, then you are automatically covered by Part A. The only stipulation is that you've got to use a hospital in the U.S. Now this is not a problem for many who plan to return back to the U.S. for retirement years or for those permanent expats who anticipate still living outside of the U.S. with plans to go back if there is any major surgery required. If you live outside of the U.S. with no plans to return for any medical coverage, you'd best do some planning for this!

Part B - Medical insurance. You've got to pay for this by reducing your monthly cash paid out Social Security benefits. If you will avail yourself of U.S. surgery and hospitalization, then you need this. We are quite content with medical care (hospitals,

physicians, et al) in Asia and thus, declined this option, which is made at the time you apply to receive your Social Security benefits.

Part C - Medicare 'Advantage'. People with Medicare Parts A and B can choose to receive all of their health care services through a choice of designated provider organizations under Part C. You can only avail yourself of this within the U.S. but not outside the country.

Part D - Prescription drug coverage. Once again this is only available if you live in the U.S. Thus, if you are an expat planning upon retirement in the U.S. then you had better consider applying for Parts B, C and D when you reach the age to apply!

A BRIEF REFRESHER ABOUT CAPITAL GAINS AND LOSSES

– primarily because so much has happened over the past few years as the reporting the IRS has been asking for has been getting somewhat more 'intricate'…..

It seems as if every couple of years we hear the same tale of woe: A client lost a fortune in an investment and has an extraordinarily large loss that he (or she) assumed could entirely be written off in the year she (or he) both realizes and painfully recognizes the loss. And for that very same year, said client made a humungous wage but, thinking that he (or she) could offset the capital loss against the wages, did not make any estimated tax payments.....WRONG!

So, our friends, here is our first item for you to refresh yourselves with vis-a-vis capital losses:

*If capital losses are more than capital gains, then the differences must be deducted even if there is no income to offset it **BUT the annual limit of capital loss that can be deducted by a couple filing jointly is $U.S. 3,000 (or $U.S. 1,500 if filing as married, filing separately).**

What's new for the coming year: **Form 1099-B**! No, we're not listing the form here – you will likely be receiving it, not preparing it. It is how the brokerage house will report your stock sales. It has been re-designed to allow for more boxes that are numbered to correlate to the Form 8949, Sales and Other Dispositions of Capital Assets. http://www.irs.gov/pub/irs-pdf/f8949.pdf. Once upon a time, (like a little over a year ago?) there was no Form 8949. One simply had a Schedule D to report one's capital transactions. Now you have an additional form on which one can reconcile multiple forms 1099 as well as show if the basis (in essence, your cost) was reported or not reported to the IRS on a Form 1099…..or not reported at all. Then, Form 8949 is summarized on the Schedule D. How long should it take to prepare Form 8949? The IRS did not venture a guess on the instructions for the 2014 Form 8949, issued on 19 December 2014.

The ‘sometimes useful’ summary chart of 2014 capital gains rates:

If income is…..	***Maximum % tax rate***	***Ownership time required***
Short term capital gain	39.6	1 year or less
Long term capital gain	15.0	More than 1 year
Long term capital gain for taxpayers subject to the regular tax rate of 10% or 15%	0!!!!!	More than 1 year
Long term capital gain for taxpayers in the top tax rate of 39.6%	20	More than 1 year
Gain from the sale of collectibles	28	More than 1 year
Unrecap. Sec 1250 gain	25	More than 1 year

Other aspects of capital transactions that you probably should know about…..

*The IRS’s penalty for you if you are making too much money: there is **a 3.8 percent ‘surcharge’ for net investment income (and yes, capital gains are part of net investment income) above $U.S.250,000 MFJ; $U.S.125,000 MFS; $U.S.200,000 ‘everyone else’.**

*There are three types of ‘Business Property’:

Section 1231 property – trade or business property, not inventory.
Section 1245 property - depreciable personal property.
Section 1250 property – depreciable real property.

***Installment sales** – An installment sale is a sale of property where the taxpayer receives payment in at least one year after the sale. Gain must be reported using the installment sale method on **Form 6252** – Installment Sales Income http://www.irs.gov/pub/irs-pdf/f6252.pdf . Annually, interest income and gain on sale must be reported on this form.

Losses are not eligible for reporting on this form. Neither inventory nor sale of personal property by a dealer are eligible for installment sale, either.

***Like-kind exchanges** are reported on **Form 8824** http://www.irs.gov/pub/irs-pdf/f8824.pdf . Truly, the rules are not that difficult and if you have a business or investment property you want to dispose of because there is another business investment or property you have your eyes set upon, you can trade, tax-free. Before selling, before buying, act logically, first! Speak with your real estate agent – if he or she has no idea what a 'Section 1031, Like-Kind Exchange' is, then get another agent, fast! We've been in business for a long, long time and far more frequently than I'd like, we have heard of clients selling and then buying, not having any idea that they could have postponed gain by 'transferring' basis to the new property. If you own a rental property, remember that you can trade it!

***Employee stock options**, where the employee becomes eligible to purchase stock in the company he or she works for, at a specified price during a specified period of time fall into two categories for tax treatment on your individual U.S. income tax return:

- Non-statutory stock options, where there is essentially no Alternative Minimum Tax but no capital gain treatment – ordinary income is the modus operandi here.
- Statutory (i.e., very well regulated) plans where the recipient must be a company employee for a minimum of 3 months prior to receiving the option grant (1 year if it is an ISO). The option is non-transferable except where there is a death (not the way to exercise a transfer!) and while there is no AMT when granted the option, oh boy, are you in for an alternative minimum tax shock when you exercise that option based upon the fair market value of the stock less the exercise price, your cost of acquisition. Be aware of the AMT before you exercise that option because otherwise, you, our friend, might be in for an extremely rude awakening next tax filing season when you see what your true acquisition price really was!

Exclusion of gain on the sale of your principal residence – Individuals can exclude up to $U.S.250,000 of gain on the sale of one's primary home if three conditions are met:

- Ownership – the individual owned the home for at least two of the five year period ending on the date of sale of the home

- Use – the individual used the home as a primary residence for at least two of the five years ending on the date of sale of the home
- Prior use of the exclusion – the individual did not exclude gain from the sale of another home during the two year period ending with the date of sale of the home.

If, instead of there being an 'individual', there is a married couple who both meet the three stipulations, then $U.S.500,000 can be excluded from gain. There are reduced benefits if both spouses do not meet all three stipulations.

The entire area of capital gains and losses is obviously a whole lot more detailed and complicated than that which we have listed……but as a minimum, you should be aware of these couple of pages worth of refresher (but not necessarily refreshment!).

THE AMT: ALTERNATIVE MINIMUM TAX

This, for those of you out there in reader-land, is where falling off a fiscal cliff, as Congress would have had us believe we were falling just a couple of years ago (in a panic-inducing mode which took its roots in the Y2K prematurely needless panic at the turn of the century) could really have been catastrophic. This is where that bungee cord of Congressional legislation, on 1 January 2013 pulled us back up from a precipice that would have seen us falling into a real bleep hole prior to being swung back to reality.

On 14 November 2012, acting IRS Commissioner Steven T. Miller stated (as per the Washington Post) that the IRS made a 'risk-based decision' not to reprogram its computer systems to account for expiration of legislation that limits the scope and reach of the alternative minimum tax to about 4 million households a year. Without reprogramming, the AMT could possibly have gone on to place 33 million taxpayers under its tax umbrella – now that could really have created a very big problem, economic stability-wise, during an economic recovery. Fortunately, Congress actually enacted a decent sort of patch to automatically upgrade for inflation the exemptions from this tax that no one quite comprehends, so that is something good. But on the 4th of January 2013, the IRS announced that it simply could not accept filing of any individual income tax return prior to 30 January, with later dates, as yet (mid-January) unannounced, for items such as depreciation and the AMT, because reprogramming simply doesn't go as fast as the programmers would like it to. Well this year, 2015, we actually have improved to a starting date to file of 20 January 2015 – as unbelievable as it seems, progress is being made!

So, what exactly is the AMT?

No matter how vocational a book might be (and face it, friends, we are dealing with taxation, our basic bread and butter - this is as vocational as it will ever get for me!), there always has to be some literary challenge; to take and make that proverbial Mission Impossible very possible. In this case our mission is to write an intelligible 1,000 word essay explaining the AMT, making it interesting enough for you to read.....otherwise the few pages written about AMT will self-destruct and you'll be none the wiser but somewhat poorer as that will make a useless section of this saga you've read and we don't want that, now, do we??? Well, let me start out with the fact that we need a bit more than 1,000 words – but we have kept it under 2,000 words!!!

In a nutshell, all that the AMT does is provide an alternative set of rules for calculating your income tax, nothing more, nothing less. These rules help determine the minimum amount that someone - you, for instance - should be paying the IRS based upon the income you have.

If you are already paying more, based upon the 'regular' tax system you already know and dread, then there will be no impact from the AMT. If you are paying less, though, then the difference between the AMT and what you would have paid through 'conventional' tax calculation methods is what you'll have to additionally pay Uncle Sam.

The first two years of work in this area were the ONLY years without the AMT, which was introduced as a result of the Tax Reform Act of 1969. The first year of AMT was 1970 when it was set into motion to target 155 high income families who had stratospheric level incomes but also had so many deductions that they wound up not paying any tax, at all. There were six attempts over these past 46 years at patching some of the inequities to the AMT that developed along the way and making it equitable as a vehicle for taxing people. Frankly, Congress has failed miserably at this task because it has always been need of additional revenue and what better way than to tax via methodology that no one really understood?

So, our friends, if you had to guess what was the biggest single cause of the AMT tax, ever expanding in the number of taxpayers filing under its umbrella? The 2000 Bush Tax Cuts - no kidding! These tax cuts generated lower tax rates; widening tax brackets and expanding personal tax credits. True, these all lowered the regular tax but they did not do a thing about eliminating the AMT, in fact, because of these three things, the number of middle class tax payers who now face additional AMT taxes is approximately 20 percent - versus nothing when it all started.

The AMT is reported on **Form 6251** http://www.irs.gov/pub/irs-pdf/f6251.pdf . It is easy for use - we use very expensive computer software for our professional tax work. The 6251 is automatically generated. If you, though, are either filling out your return by yourself or wish to do some projection work to assess whether or not you're going to be liable for the AMT next year, then you've got to print out this copy of this form (and possibly, the instructions, too) which is, once again, easy to access off of the IRS website, www.irs.gov.

Remember, the AMT operates under a different set of rules. There are benefits available to you under the regular tax that are either reduced or eliminated under the AMT. These have to be entered onto form 6251 from which you also get a special deduction the AMT

exemption, which once was designed to prevent AMT from applying to middle class taxpayers - not anymore. You then have to calculate the AMT at rates (based upon income and filing category) varying between 26-28%. As we said, if, as a result of this exercise, the regular tax is higher, the AMT does not apply. If you get a higher amount, though, for AMT, from the form 6251, then you will have to pay that additional difference. The AMT tax exemptions for 2014 and 2015 are:

	For tax year 2014	For tax year 2015
MFJ or QW	$U.S.82,100	83,400
Single or HOH	52,800	53,600
MFS	41,050	41,700
Kiddie tax filings	7,250	7,400

Kaye A. Thomas, in Tax Guide for Investors (http://www.fairmark.com/amt/topten.htm) lists the ten things causing an AMT liability. They are:

- Personal exemptions - they are not allowed when calculating the AMT and thus, virtually apply to everyone.
- According to Thomas, 70 percent of American taxpayers utilize the standard deduction, rather than itemize. The standard deduction is simply not allowed for AMT.
- State and local taxes. This is usually a big deduction for those who itemize. It is not allowed for the AMT.
- Interest on second mortgages. When Thomas wrote this article in January 2008, we were still living in a world of collateralized debt and second mortgages were still being used in the States. Are they, anymore? And what does the Congressional 'repeal' of banking regulations portend insofar as the rebirth of the CDO?
- Medical expenses. While the AMT does allow a medical expense deduction, it is far more limited than the medical deduction under 'regular' taxation. If you have a medical catastrophe but with the good fortune to survive not only the medical procedures but the medical bills, too, then you will likely suffer the indignity of also having AMT as a result of being able to take a medical expense deduction under the AMT.
- Miscellaneous itemized deductions. Such things as tax preparation fees, investment expenses and unreimbursed employee business expenses are

subject to being over a minimum 2 percent of adjusted gross income in order to be eligible for ‘regular’ tax itemized deduction. These items are not eligible for AMT and must be added back to arrive at AMT income.

- Various tax credits - more are not allowed for AMT purposes than those tax credits that are allowed. Thus, the chances are that if you have a lot of tax credits, you will also have AMT.
- Incentive stock options - in the twenty-five years of work, full time, outside of the U.S., this is the ONE aspect of AMT most confusing and painfully costly to those lucky expats who worked for a start-up that achieved the promise that caused the expat to work for that endeavor. There is no tax for incentive stock options under ‘regular tax’. But watch out - you have to list that option on the form 6251 and this can be costly!
- Long-Term Capital Gains - there are benefits from lower tax rates under both the regular tax and AMT but for some strange reason, a large capital gain reduces - or eliminates - the AMT exemption amount and guess what - that LTCG will also cause an AMT - ouch!
- Tax-exempt interest bond interest. According to Thomas (and who am we to doubt this?), bonds that are not exempt from AMT pay a higher rate of interest to compensate for the fact that they are not exempt. If you are an investor in bonds that are not exempt under the alternative minimum tax, then you are a candidate for AMT. Frankly, we have not seen anyone pay AMT because of bond interest - we guess we do not have the ‘right’ type of client....!

That’s it, folks - do you understand? Does the AMT apply to you? Well let us face it - those who have to pay additional tax because of AMT seem to be getting more and more numerous each year. We’ve seen it from personal experience and that’s why we include it here as something that you should be aware of!

PENALTIES, PENALTIES….AND MORE PENALTIES –

Here it is, folks, in one fell swoop! All the penalties you need to give you sleepless nights - and they are only for you, the U.S. tax filer living outside of the United States (presumably) and subject to filing forms that your domestically based counterparts have never even heard of. What's that you say? You've never heard of them either? Then perhaps you had best read on, as these forms and the penalties incurred by not filing when you should have are, by and large, 'confiscatory'! We wonder just how 'constitutional' they really are. Anyhow, if it is the standard, pure unadulterated penalty that everyone else is subject to, look it up elsewhere – this is just for those of us residing out of the States! We've also included a brief word (or two, or three or four or more – and no, IRS penalties ain't Loveland!) about interest and the evolving statutes of limitations

If you thought that the IRS lets you off lightly with penalties, you are seriously mis-informed! Penalties are severe and imposed for so many different reasons, so frequently, now, that we think one could probably develop a well-paying occupation specializing in IRS penalties imposed on smaller tax payers. In fact we know that it can be done – no one of sound mind truly wants to get up at 3am in Asia, only to be held for a half-hour or more, waiting on the telephone for an IRS officer to respond, only to be cut off. The indignity of that early morning telephone call, one which truly screws up the rest of your day, is only lessened by the fact that with services such as Skype, it no longer costs as much to suffer IRS indignity! Are all the penalties you might find on an IRS letter correct? Can any of them be fought? Can one reach resolution with the IRS during a time of budget cuts making workloads higher and the number of IRS employees available to be of service lower? What can we say? If you believe you've been wrongly penalized but that the cost of the penalty is less than the cost of fighting it, then pay it. If you believe you are in the right and have the patience of Job, then fight on! But first, here's some worthwhile reading:

You need to have some basic knowledge of penalties – otherwise, how the heck would you ever know whether you were targeted for imposition of some penalty for which you have been incorrectly assessed?

Do you have a bank account or brokerage account in the U.S.? If so, you will be getting that once-a-year summary Form 1099. This form can be for interest income, dividend

income or for capital gains/loss transactions where just the sales totals for 2014 will be listed on the 1099 - with you, the tax return filer responsible for providing the cost data to go with the sales or income. This year, you are likely to get the new 1099-B, with a whole lot more boxes to correlate with a whole lot more additional forms to be filed in the IRS's anti-simplification, paperless tax society.

If you, living overseas, have not received a Form 1099 for a U.S. based account by mid-March, 2015, we advise you to get in contact with that bank or brokerage and find out where your copy of that form is - the 1099s are one of the few areas where IRS computers seem to work - they tie in their numbers to those of your tax return and if a 1099 amount is missing from your tax return, you're likely to eventually receive a letter from the IRS within a couple of years – there might be personnel cutbacks as a result of reduced budgets but those IRS letters just seem to be increasing as time goes by. The IRS ties in Schedule B, interest and dividend income and Schedule D, Capital gains and losses.

As we write this essay in January, 2015, we refer to a very 'painful' example of how the IRS picks things up and where you may receive a letter, even though you have properly filed your return. This is an event that transpired two years ago and is typical of the nightmare examples we have been involved with in recent years.

We got a frantic email from a tax client who was assessed $US74,938 for income which the IRS stated in a not-very-user-friendly letter, was not declared on the taxpayers' 2009 tax return plus approximately $US30,000 in penalties and interest. Following are our comments regarding the letter received and the 'actual' situation:

The clients' tax return, as filed, did show a $US75,000 sale of stock through that brokerage house, based upon the one number appearing on the brokerage house's Summary Form 1099. The entire form 1099 package that the client received came to over 25 pages because of all the detailed information provided by the brokerage that also covered six stock sale transactions during the year for just one company's stock, that comprised the one amount that was listed on the 1099. But that summary amount may no longer be the practical amount to include on a tax return. The reason? The IRS took each sale separately with these six separate transactions adding up to the slightly different amount on the IRS letter than the 1099. By 'slightly different amount', we're talking under $U.S.100.00.

Alas, the IRS computer system is programmed automatically to regard your stock sale as all profit - no cost basis is entered. While the IRS system is striving to be able to have cost data, it'll be a long time coming prior to this actually working. The IRS says it

works. We do not believe them! As a result, the letters generated are seriously distorting incorrect IRS penalties assessed based upon insufficient data to make that assessment correctly, in the first place! Did you ever wonder how much is overpaid by taxpayers receiving grossly incorrect letters like this one, a very 'typical' letter? We, as a culture, seem to be raised from birth onwards to automatically turn over a government letter to the lawyer or accountant, letting them handle the situation, rather than to try to read any logic into an intimidating letter that, were it sent out in a more friendly manner, would suggest that you probably had a cost basis and thus, a far lower tax obligation, if any. But no, in this day and age, the government needs to bail out its recklessly overspent system and raising funds immorally is an accepted IRS method of doing so! Yeah, it is wrong. But it is not likely to change, so you'd better be aware of both the letters you are likely to receive and the penalties you are likely to be assessed.

Schedule B of Form 1040 and the FinCEN114, F(u)BAR penalties

If you have interest and dividend income over a minimum amount, you are required to submit Schedule B of Form 1040, listing the interest and dividend income you might have received. This form, though, is far more than just that. Look at the bottom of this form
http://www.irs.gov/pub/irs-pdf/f1040sb.pdf .

Part III "Foreign Accounts and Trusts" - the first line of this section states very clearly: You must complete this part if you had over $US1,500 of taxable interest ordinary dividends.....had a foreign account....or received a distribution from or were a grantor of or transferor to a foreign trust.

Do you have your tax return prepared by a U.S. based tax preparer? Is he or she aware that this part of Schedule B even exists? Well, you'd better let that tax preparer know if last year's Part III was left blank (as is frequently the case) because this can now be a costly matter because failure to properly report your foreign account(s) on both Schedule B **AND** on FinCEN114 (if you have over $U.S.10,000 in all your bank and brokerage accounts in any one country) may be the only justification the Department of the Treasury and the IRS needs to assess civil and/or criminal penalties.

There are two civil F(u)BAR penalties. They are referred to as 'non-willful' and 'willful'. The non-willful penalty can go as high as $U.S.10,000 for each 'negligent' violation of the F(u)BAR filing and can only be waived if your violation was due to reasonable cause. Have you ever tried to argue 'reasonable cause' with the IRS? Trust us when we tell you that the IRS treats situations like this in an extremely unreasonable manner! Even if you properly reported the amounts previously on Form TDF90-22.1 but for last year and

onwards on FinCEN114, you can still be penalized for not reporting on Schedule B of the Form 1040. The reason for this and one of the primary reasons for that always being revised Form 8938 are due to the fact that the IRS/Department of the Treasury computer system does not work the way you would have expected it to work: Those IRS computers around the country simply do not communicate with one another. If they communicated, then the information on the previously used Form TDF90-22.1 would automatically go from Detroit, Michigan to the other IRS computers and the IRS would then theoretically have all the information it needed. But without communications, they've gone and started enforcing penalties on F(u)BAR filings, in complete contrast to all years prior, when the TDF form was solely an information return for which there was low compliance. Now, the IRS feels it needs this information on 'more' than just an information return and sadly, on more than one form. No, we don't like it but what can one do other than voice protest – at least we've got that left…...

Let us look at a retired U.S. tax filer who has less than $U.S.9,500 income for 2014 and has $U.S.15,000 in a foreign bank account. Does that individual have to file FinCEN114? ABSOLUTELY! But what about filing Form 1040, the individual income tax return, which would include a Schedule B? That, our friends, is the big question. Theoretically, you should not have to file because you are under the minimum for filing purposes but then, there's Part III of Schedule B. Will not filing and thus not checking those three boxes within Part III eventually generate an IRS computerized letter? We are not quite sure what to tell you here but if you ever do get a letter, it'll definitely contain a penalty!

Still, this is clearly a case of non-willful neglect if such a situation were to happen. What about a situation where there is willful failure to file? Willfully failing to file an F(u)BAR can be justification for both criminal sanctions (imprisonment?) and civil penalties equivalent to the greater of $U.S.100,000 or 50 percent of the highest balance in an unreported foreign account per year, for each year, potentially going back to 22 October 2004 for which an F(u)BAR was not filed! That's kind of scary!!

Other forms, other penalties.....

- **Failure to report an ownership interest** - if you own more than 10 percent of a foreign corporation on **Form 5471**, the 'notorious' **Information Return of U.S. persons with Respect to Certain Foreign Corporations** http://www.irs.gov/pub/irs-pdf/f5471.pdf will draw a $10,000 penalty. We have seen this happen in numerous instances over the past few years. Theoretically, that penalty can be increased by $U.S.10,000 each month that failure to file continues beginning 90 days after the taxpayer is notified of the delinquency, up to a maximum of $U.S.50,000 per return. That's pretty

draconian. Truth be told, we have not yet seen or heard of that additionally monthly fine being assessed but we would not be the least surprised to find it happening.

Here's an interesting situation that arises from the IRS's own 'Frequently Asked Questions' from its second voluntary disclosure program. Question # 18 from this particular set of FAQs asks:

What about a taxpayer who only has delinquent Form 5471s or Form 3520s but no tax due? Does that taxpayer fall outside this voluntary disclosure process?

The answer to that question was: "A taxpayer who has failed to file tax information returns, such as Form 5471 for controlled foreign corporations (CFCs) or Form 3520 for foreign trusts but who has reported and paid tax on all their taxable income with respect to all transactions related to the CFCs or foreign trusts, should file delinquent information returns for the form and attach a statement explaining why the information returns are filed late. (The Form 5471 should be submitted with an amended return showing no change to income or tax liability). The IRS will not impose a penalty for failure to file the information returns if there are no underreported tax liabilities and the information returns arte filed by September 9, 2011." True, there have been subsequent FAQs to subsequent OVDPs (and there's a section, later on, about the newest program), but, in essence, that answer still stands!

Let us suppose that you've paid tax related to income from your foreign corporation but never previously filed a Form 5471. We are obviously well past the end of the second program but still, you have only recently become aware that you are in violation because even though you've paid, you haven't filed. Will you be penalized now? Good question! While the IRS states that you will be penalized, you just might have the ammunition of that FAQ answer on your side if you want to try and be persistent, sending letter after letter after letter, pointing this out to the IRS if they ask this question. Frankly, we am not quite certain that the IRS itself truly understands what to do in this sort of situation!

- Form 5472 Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business http://www.irs.gov/pub/irs-pdf/f5472.pdf. Ah, this is one that finally is a good example for those who are not U.S. citizens - here's a form just for you! This is the "Information Return of a 25 Percent Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business". We recently took a client through the expatriation process. He has lived in Hong Kong for 35 years and does not envision ever returning to the U.S. to live. But that

client has a U.S. corporation in addition to his offshore corporation. While he no longer has to report that offshore corporation ownership on his individual income tax return using Form 5471, he now has to start filing Form 1040NR for the interest income he still earns from his U.S. bank account and next year he'll have to report, using Form 5472, his ownership of a U.S. corporation because he is no longer a U.S. citizen. The penalty for failure to file is similar to that of Form 5471: $U.S.10,000, with additional $U.S.10,000 monthly increments after you've been notified of your delinquency by the IRS.

- **Form 8865 Return of U.S. Persons with Respect to Certain Foreign Partnerships** http://www.irs.gov/pub/irs-pdf/f8865.pdf . Are you in business with a non-U.S. partner wherever you may live? Are you an investor in an offshore partnership wherever you may live, too? Then, our friends, you've got a form intended just for you. Form 8865 is the "Return of U.S. Persons With Respect to Certain Foreign Partnerships" and you've got related penalties, just for you! Firstly, there is that ubiquitous $U.S.10,000 failure to file Form 8865 penalty where, additional monthly penalties of $U.S.10,000 per month, can be added to the penalty 90 days after the IRS notifies you, the delinquent one. That one, as the others, goes up to a maximum of $U.S.50,000. And there is even one more penalty, just for you: a 10 percent of the value penalty for any transferred property that has not been reported.....and that one penalty, alone, can go as high as $U.S.100,000!

- **Form 3520 Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Gifts** http://www.irs.gov/pub/irs-pdf/f3520.pdf Wow, there is a section of this book specifically related to this form and gift giving. There are people out there, lots of people, who are getting stung by this, needlessly. Those of you who are part of a multi-cultural marriage - you are potential prey to the predatory IRS! Beware!!!

There is a massive penalty for failure to provide the IRS with timely foreign trust information. There is a 35 percent penalty for failure to report creation of a foreign trust if you are a U.S. person living overseas. If you are that US individual, have you ever transferred a sizable amount out of the U.S.? What was the amount for? Might those monies be 'considered' by the IRS (if no one else) as going to what they consider to be a trust? That too is subject to a 35 percent penalty for not reporting. Is there a U.S. beneficiary who has received a gift from a foreign trust or a foreign person (foreign grandparents can be wonderful - just ask our daughter!!)? Here's another sizable penalty. This one is 5 percent a month, up to a 25 percent penalty for the gross reportable amount that should have been reported. Yeah, it is costly!

Yet there is an exception to this 'set in cement' penalty: 'Reasonable cause'.

The IRS states that: No penalties will be imposed if the taxpayer can demonstrate that the failure to comply was due to reasonable cause and not willful neglect.....the fact that a foreign country would impose penalties for disclosing the required information is not reasonable cause. Similarly, reluctance on the part of a foreign fiduciary or provisions in the trust instrument that prevent the disclosure of required information is not reasonable cause.

So, just what is 'reasonable cause'? Is reliance upon the advice from a Big 4 CPA form 'reasonable cause? Is advice from me, a small firm CPA, reasonable cause? Do you get what you pay for if you use a 'connected' professional? The choice in this area is yours, our friends! This is one, frankly, where the IRS is making things very, very difficult for penalty victims. There is so much 'conflicting precedence' on both sides that for all intents and purposes, 'reasonable cause' might be difficult to prove. Still, we recommend 'fighting penalties' if you firmly believe you were not willfully neglectful and that you did have reasonable cause.....but sadly, the odds seem to be against you - not enough to give up hope, though. Yet if you still believe you are right, then fighting windmills still does work.

- **Form 3520-A the 'Information Return of Foreign Trust With a U.S. Owner'** http://www.irs.gov/pub/irs-pdf/f3520a.pdf .If you think you just might unknowingly be a trust owner, then you really should read this brief paragraph. There is a penalty for failure to file this form or for filing an incomplete form. This penalty is 5 percent of the gross value of trust assets determined to be owned by the U.S. person. Here's where there could be problems - let us assume that you, the reader, are a spouse in an international marriage, that your in-laws have been giving your kids as well as giving all of their grand kids (the rest of whom are not U.S. citizens) gifts. Could those gifts, sizable and possibly planned have come from trusts? Is this a matter your father-in-law just might not be willing to reveal to you? Are your children's interests – something that have to be reported to the IRS on this form? This is just some 'food for thought'.

- **Form 926** http://www.irs.gov/pub/irs-pdf/f926.pdf Remember our discussion of Form 8865, where the IRS was able to ding you if you did not report property transferred to a foreign partnership? Well they're going to ding you, as well, if you transfer to a corporation because of the **"Return by U.S. Transferor of Property to a Foreign Corporation."** The penalty for failure

to file Form 926 is 10 percent of the value of the property transferred, up to a maximum of $U.S.100,000 per return, with no limit if failure to report the transfer was intentional. Ouch! What about the older U.S. citizen who has gone back to live in either Taiwan, India or Israel who no longer has his bank accounts in the United States but back in the jurisdiction where he or she has returned to live. What happens if you have a nephew who has started a corporation to which you have decided to become an investor and transfer cash from your overseas bank and possibly other property to that corporation. Are you required to file or else face the possibility of some stiff penalties? Alas, yes, you are required to file.....sorry about that!

A few words about interest:

If you do not file your individual income tax return for 2014 by April 15, 2015, you are going to owe interest if you owe any tax. If all you get from the IRS is a letter claiming you owe interest, only, the chances are it is a low amount and the chances are that this is perhaps the one aspect of this letter that is correct. The IRS screws up on penalties. We have rarely seen them screw up interest.

The Statute of Limitations and how to double it or worse!

There is, on the books, a legitimate 3 year statute of limitations. If you apply for the Offshore Volunteer Disclosure Program, for which we have a book section just a bit more into this year's book, you voluntarily agree to waive those three years and opt, instead, for 8 years. Now we are sure there are cases where volunteering for this program would make sense but we have yet to work with anyone in this category.

You don't even have to apply to simply double those three year to six if you have omitted more than 25 percent of your income from a return you have filed. And it can be a whole lot less than 25 percent: If you omitted $U.S. 5,000 or more of foreign income, you automatically waive your three years and get six – We'll bet you didn't even know that! Then there's the ultimate 'worst case' scenario: the IRS has no time limit if you never even file a return! Forbes Magazine, in March, 2014, published an article about Form 5471 and how you never will leave the audit process if you screw up and have omitted this form. So a life long audit isn't your cup of tea? Read the article: http://www.forbes.com/sites/robertwood/2014/03/13/scariest-tax-form-skip-it-and-irs-can-audit-forever/

Thus, a bit of education in this area wouldn't hurt a bit…..I hope that what We've written has been educational!

THE OFFSHORE VOLUNTARY DISCLOSURE PROGRAM AND, MORE IMPORTANTLY, THE STREAMLINED PROCEDURES –

BUT FIRST…..

On 14 January 2015, the National Taxpayer Advocate, Nina Olson, stated in her annual report to Congress (806 pages – and no, we haven't read it, yet…..LL 16 Jan 15) that despite improvements to its Offshore Voluntary Disclosure Program and Streamlined Procedures made 7 months ago, mid-June, 2014, a lack of fairness and transparency continues to be a pitfall for the programs; that "Unlike the last time the IRS made taxpayer-favorable changes to an OVDP, the IRS will not allow those who already agreed to pay disproportionate offshore penalties to benefit from the changes. Moreover, the IRS has not formally asked for comments or explained why it adopted some suggestions and not others. Nor does it disclose internal guidance." This report cites OVDP as one of the IRS's most serious problems for taxpayer rights, disproportionately harming taxpayers who possess the smallest offshore accounts.

O.K. That's the summary presented to Congress, early in 2015. Will the problems discussed within this 806 page document be addressed by Congress next year? Don't bet on it! Before we look at the newest OVDP/SFCP, announced on 18 June 2014, for inception starting 1 July 2014 but with forms and instructions and explanations still coming in December 2014, let us do a brief history of OVDP…..

2012 - The IRS's Offshore Voluntary Disclosure Program (in essence, this one is still in effect!)

Monday morning, 9 January 2012, three years ago – does it seem a tax lifetime away? - a day like all days, filled with those various and sundry events and occurrences that alter and illuminate our lives and the Internal Revenue Service certainly did its job this time around, 'illuminating' us by issuing its newswire bulletin IR-2012-5, announcing the third Offshore Voluntary Disclosure Program.

"The Internal Revenue Service today reopened the offshore voluntary disclosure program to help people hiding offshore accounts get current with their taxes…" **Why does the IRS continue to think that we are 'hiding' accounts? Do they really think we are all**

guilty and have the obligation of proving ourselves innocent? There is something fundamentally wrong with this assumption – it is 'un-American'!

The 2012 program:

A) Unlike prior programs with specific starting and stopping dates, there is no set deadline for people to apply (however, they still must apply in order to voluntarily surrender their right to the three year statute of limitations and opt for reporting 8 years of prior years' tax returns). This open-ended program has terms that could change at any time going forward!

B) The penalty framework for this program requires individuals to pay a penalty of 27.5 percent of the highest aggregate balance in foreign bank accounts/entities or value of foreign assets during eight full tax years prior to the disclosure.

C) Some taxpayers will be eligible for 5 percent or 12.5 percent penalties; these remain the same as in the 2011 (first OVDP) program.

D) Participants must file all original and amended tax returns and include payment for back-taxes and interest for up to eight years.

E) While participants face a 27.5 percent penalty, people whose offshore accounts or assets did not surpass $75,000 in any calendar year will qualify for the 12.5 percent rate.

F) Awareness related to tax filing obligations, including awareness by dual citizens and others who may be delinquent in filing but who own no U.S tax should await announcement of procedures that the IRS is developing just for them so that they may come into compliance with U.S. tax law. "The IRS is also committed to educating all taxpayers so that they understand their U.S. tax responsibilities." Our comment: if it is the goal of educating all taxpayers, they are doing a rather poor job of it!

And then it happened – 'Streamlined Procedures' were announced by the IRS on 26 June 2012 for implementation on the 1st of September. To qualify, you had to fill out a two page questionnaire where, while the questions are actually written in user-friendly English (a rarity for the IRS), they pose more dilemmas for you in answering because you are never quite sure what will be done with what you have submitted if you are rejected from the program. This procedure became available for non-resident U.S. taxpayers who have resided outside of the U.S. since 1 January 2009 and who have not filed a tax return

during this same period and who owe less than $U.S.1,500 for any tax year where reporting is due.

Amended returns submitted through this program will be treated as high risk returns and subject to examination, except for those filed for the sole purpose of submitting late-filed Forms 8891 to seek relief for failure to timely elect deferral of income from certain retirement or savings plans where deferral is permitted by relevant treaty. Huh? The program may be streamlined but for whom – especially if you have absolutely no idea of what the IRS is doing.
Are you sure you want to volunteer when there are legal, valid alternatives for filing and updating your data other than through a program run by the Criminal Investigations Division of the IRS? Think about it!

June 18, 2014 – a very welcomed Streamlined Change!

We were in Shanghai on 19 June 2014 when we read, in Tax Analysts, the IRS announcement about changes to its program. We couldn't believe what we were reading! It took about a week for the mainstream press to pick up on this, basically through IRS press releases. In essence, OVDP has not changed – and we do not recommend it for anyone but the high net worth tax cheat. What's that you say? You are not a cheat, you don't owe anything or unknowingly have discovered that you owe a little bit and are definitely not willfully neglect in your U.S. tax obligations!

Well, friends, it took a couple of years but the IRS actually came through with their promise! There are brand new **Streamlined Filing Compliance Procedures** that specifically apply to U.S. tax filers meeting a little bit more stringent residency requirements who, for whatever the reason may be, have been somewhat remiss in their obligations in reporting and paying tax due from income generated from those foreign financial assets. This is as close as you'll get to an amnesty program from the IRS! This new program eliminates the $1,500 threshold as well as the application form to enter the program. It is available to taxpayers certifying that their failure to report foreign financial assets and pay all tax due in respect to those assets did not result from willful conduct on their part. It can be used for either delinquent returns or amended returns.

Eligibility

If, in any one of the three most recent tax years, you had a U.S. home/primary residence, you are not eligible. If you spent less than 330 full days outside the U.S. during any of those three years, you lose eligibility. On the other hand, for those of you who have not

been back to the States in a while, this may just be the method you use to 'catch up'. It is penalty-free for those eligible!

What you've got to do:

- If you have not previously filed: File for the past three years – for those filing in 2015, that means tax returns for 2012, 2013 and 2014. These returns will include the information forms (i.e. 3520, 5471, 8938) that the IRS wants to know about and will add to its new data bases. This, we believe, is the main thrust of the program: getting more expat filers on the tax rolls.

- If you have previously filed: You've got to file amended returns for these three years – same basic information about foreign financial assets that the IRS wants to know about…..

- No eFiling allowed here – you've got to paper file!!! On top of each Form 1040 (or 1040X), in red pen, you've got to write: STREAMLINED FILING OFFSHORE

- You have to attach **Form 14653 Certification by U.S. Person Residing Outside of the United States for Streamlined Foreign Offshore Procedures** http://www.irs.gov/pub/irs-pdf/f14653.pdf to each of the three tax returns you are filing and you have to use this form as a cover to the package of the three years of forms…….and you have got to attach payment based upon this form AND you have to ship the entire package to:

Internal Revenue Service
3651 South I-H 35
Stop 6063 AUSC
Attn: Streamlined Foreign Offshore
Austin, TX 78741 USA

More about this form a bit later…..trust me, though, we will be at our cynical best in telling you our thoughts!

- You have to file 6 years (for those doing this in 2015, that means 2009-2014) FinCEN114 with each year including a statement explaining that the FBARs are being filed as part of the Streamlined Filing Compliance Procedures.

That's it! The IRS defines non-willful conduct as follows: ***"Non-willful conduct is conduct that is due to negligence, inadvertence or mistake or conduct that is the result of a good faith misunderstanding of the requirements of the law."*** If you honestly believe you are non-willful, this is an opportunity to get back into the system. The IRS states categorically that using this method will not 'close' your tax situation; that you are still subject to audit but hey, take a chance – we are living in an era of budget cuts and if you clearly demonstrate (through the data on your tax return that you can be 'milked' for more, what is the likelihood of the IRS going after you? On the other hand, if you are already 'bled dry', the IRS can't really afford to go after you. The IRS wants you back into the system, that's all there is to it. This program won't last forever – if it is to your benefit, then take advantage of it while it exists.

And what if you do not meet the residency/eligibility requirements? There is another form and another procedure for you – along with a 5 percent penalty.

Getting back to Form 14653…..There are two paragraphs at the bottom of this two page form we are going to quote:

"I recognize that if the Internal Revenue Service receives or discovers evidence of willfulness, fraud, or criminal conduct, it may open an examination or investigation that could lead to civil fraud penalties, FBAR penalties, information return penalties, or even referral to Criminal Investigation." Unless you are a tax cheat and I doubt if you are, then so what? Just by filing a tax return you automatically subject yourself to the same!

"Note: You must provide specific facts on this form or on a signed attachment explaining your failure to report all income, pay all tax and submit all required information returns including FBARs. Any submission that does not contain a narrative statement of facts will be considered incomplete and will not qualify for the streamlined penalty relief." Of course you have to go ahead and write something…..but remember: the more you write, the more likely you are causing someone to actually have to look at the returns you've just filed. Whatever you write, make it complete but concise, knowing that budgetary cuts imposed upon the IRS and the significant drop in audits more or less puts you in a better situation than you thought you were in! Of course, we could be wrong, but after 48 years of working the IRS 'system', we feel comfortable stating this.

What about the so-called 'quiet disclosures' of filing directly with the IRS, bypassing the Streamlined 'system'? What should you do if you have three years of returns and six

years of FBARs for which no tax is due and within which, while there might be a Form 5471 or 8938 attached with amounts that are not really 'material'? I'd go ahead and recommend filing quietly. Why add additional paperwork to an IRS system that is, for lack of better description, dysfunctional?

And now, some comments about Form 14653:

- Where'd they get that form number? It is so far outside the range of the IRS numbering system, we wonder if this might have been someone's street address. Think we'll ever find out? We doubt it – the truth probably lies in that 'lost' bundle of retired IRS executive Lois Lerner's email files from the IRS Not-for-Profit mini-scandal.

- Spouses are advised (in the very first sentence on the form) that they should submit joint certification. And yet, that same paragraph states : 'If spouses submitting a joint certification have different reasons for their failure to report all income, pay all tax and submit all required information returns, including FBARS, they must state their individual reasons separately in the required statement of facts.' We wonder just how many divorces this is going to cause?

- If you use an Apple computer, you are guaranteed to get the following response if you attempt to access this form through the IRS system:

Please wait…If this message is not eventually replaced by the proper contents of the document, your PDF viewer may not be able to display this type of document.

You can upgrade to the latest version of Adobe Reader for Windows, Mac or Linux by visiting http://www.adobe.com/products/acrobat/readstep2.html.

For more assistance with Adobe Reader visit http://www.adobe.com/support/products/acrreader.html.

We use a Mac Air, partitioned with Boot Camp. We cannot access this form on the IRS site through IOS. Alas, using Windows, we cannot access the form on this site with Google or Firefox. But we can access it using either Internet Explorer or Opera portals ONLY after we disengage Adobe Acrobat and install Reader. This is unconscionable!

GIVING AND RECEIVING –

You've got to report both giving (ever hear of the gift tax return?) and receiving (there's a tax form for this, too – receiving from anyone, whether foreign trusts, gifts and bequests to you from either related or unrelated individuals (even if they are not US tax filers) will be costly if you do not report!

The first thing that comes to mind in writing this essay is that it was not until later in life that we ever felt we had a handle of what the hell a trust even was - we had absolutely no need to know anything about a trust - that was for rich people, which we weren't.

We're still not rich but we have definite reason to know, since a whole lot of things are tied into **Forms 3520** and **3520-A, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Gifts** http://www.irs.gov/pub/irs-pdf/f3520.pdf and **Annual information Return of Foreign Trust with a U.S. Owner** http://www.irs.gov/pub/irs-pdf/f3520a.pdf. which this section is all about – a short section but, none-the-less, something that you should be aware of.....and we think that there are a sufficient number of you out there who now also need to be aware (rather than should be) of what the hell a trust is but you can't find out in user-friendly English. So here's our attempt at it:

In many, many parts of this world, a non-U.S. passport holder can avoid both domestic income taxes and estate taxes through use of a tax entity known as a trust. Think of yourself, the reader, an individual, as a tax entity. If you work for a corporation, that corporation also is a tax entity. A trust is really only another way of owning things and doing things. Beyond that, use your imagination just as Icelandic investors must have done years back, prior to the crash of 2008, to dream up ways for new trusts to own things never owned before, doing things that were too complicated to figure out in the first place.

O.K., let's get back to the real world. For those of us, non-exotic Icelanders, a trust (and this is important - this is why they are being set up so much more frequently) is nothing more than an alternative to individual, partnership or corporation ownership – of anything. It can function as a corporation, for commercial purposes and can be used to form a vehicle for investment or just to hold assets for 'litigation protection'.

Some trusts are based in very low tax countries - tax havens. There's a thing going on between India and Mauritius, the offshore jurisdiction of preference for Indians seeking

an effective tax rate of 0. It doesn't matter if it is a trust or corporation because there are so many Indian-owned Mauritius entities that the likelihood of paying tax on these entities is almost as good as winning the lottery - without buying a lottery ticket! The worldwide acceptance of the trust as an additional means of ownership has led to several tax jurisdictions creating 'special purpose' trusts, catering to aspects directly pertaining to ways of doing business for tax minimization purposes. If you are U.S. tax-related, while the rest of the world can and does do these things with trusts, you, our U.S. friends, can't do these things – there are far more restrictions.

We repeat: these benefits do not apply to U.S. tax filers - not just U.S. passport holders. U.S. tax filers have to report everything! In a nutshell, the IRS views a foreign trust (or what should have been set up as a trust) with any U.S. tax filer involvement, either directly or indirectly, as being there solely for tax avoidance. You've got to file or be at risk because this is likely the ONLY area of IRS law, rules and regulations where you are presumed guilty and it is solely your burden to prove yourself innocent!

There is a 'classic' 11 page article available through a web search from the Washington DC law firm of Caplin & Drysdale, entitled "United States: Foreign Trusts: Everything You Wanted To Know About The Taxation Of Foreign Trusts But Were Afraid to Ask". Actually, it is a 7-page article with 4 pages of footnotes. Alas, the article reads as you'd expect from one that generated over half a page of footnotes for each page of written article - it was nowhere as friendly or inviting as that title. Nonetheless, it is a worthwhile article because if you have the patience to read it through, it highlights what you should know:

A. A trust is any 'arrangement' that is set up where the trustees, to whom assets are 'given', have responsibility for the protection and conservation of those assets for beneficiaries who do not take part in that responsibility. This is like being a minority stock- holder of either a public or a private company - yeah, you are an owner, but effectively without many aspects of ownership.

B. For U.S. tax purposes, there are either foreign or domestic trusts. Unless a U.S. court (federal, state or local) can exercise primary jurisdiction over that trust or a U.S. tax filer (s) controls substantial decision-making power of the trust, it will be considered to be a foreign trust.....but that does not necessarily exempt that foreign trust from having reporting obligations to the IRS.

C. There are two types of trust: grantor and non-grantor.

Grantor trusts have been set up where a U.S. tax filer was the one transferring assets but still maintains elements of control. Well that grantor will have to report income and gains on his or her individual tax return, with that income coming from either Form 3520 or Form 3520-A.

Non-grantor trusts - No matter whether they are foreign or domestic, non-grantor trusts, where the grantor irrevocably surrenders assets to the trust, relinquishing all elements of control, are treated as separate entities for U.S. tax purposes. If there is a U.S. beneficiary from this type of trust, then this too, must be reported on Form 3520.

Failure to report can result, once again, some very severe penalties. Any distribution from a foreign trust going to a U.S. beneficiary will be treated as taxable income unless the forms you submit substantiate otherwise. Yup, that old undemocratic process of being presumed guilty until you can prove yourself innocent!

For tax year 2014, there is an annual gift exclusion of $U.S.14,000. If you made a gift to your spouse who is not a U.S. citizen during 2014, there is an annual exclusion of $U.S.145,000.

Don't worry if you've given gifts – chances are you fall under the lifetime exclusion, which currently amounts to $U.S.5,340,000. If your total gifts during your life fall under this amount, you will be a tax-free donor with tax-free recipients. If, on the other hand, you are a high net worth individual, be aware that the top rate for gifts and generation-skipping transfers is 40 percent.

In essence, if you, a U.S. tax filer, received either directly or indirectly either a foreign trust distribution, including the uncompensated use of trust property, you have a filing obligation. If you received more than $US100,000 from a non-resident alien, you must report this on both page 1 of the trust tax Form 3520 and in Part III of that form. Similarly if you received funds from a foreign corporation that you've treated as something other than wages or business income, this must also be reported, regardless that the person or corporation giving this to you has absolutely no U.S. affiliation. And yes, the penalties for this are severe (read the penalty section!).

Giving – you don't have to be rich to give but you still have to report it!

SO YOU ARE PLANNING TO MOVE BACK TO THE U.S. - THINGS YOU'VE GOT TO BE AWARE OF!

Twenty-five years ago, there was one topic guaranteed NEVER to come up for discussion: retirement back to the U.S. Now? Repatriations seem to be happening, fast and furiously, for a large number of long-time clients.

A couple of years ago, we included an essay in the 2013 edition where we discussed the financial needs and aspirations of one generation being completely different from those of generations ahead and behind them. We have used that essay as the basis of an essay in this edition…..a couple of sections to go and you're at that essay in this book. Back then, we wrote about those Indians who fled the sub-continent during the Emergency. We wrote about Taiwan's best and brightest departing during the Cross Straits saber-rattling days post-Mao and the Gang of Four. We wrote about the young Israelis who, after the Yom Kippur war, wanted a life without constant threat of war with preparedness for such in Israel meaning 'a life time' of military call-ups and army reserve duty.

Lots of emigrants came to the U.S. during those turbulent times. Many of them became quite successful in the States and now they want to go home.....they are expatriation as an entirely new generation of their compatriots desirous of the 'American dream' moves to the U.S. for the chance that their successful grand parents' generation had. Is there an every other generation revolving door of international migration in this day and age of mobility?

Simultaneously, as these individuals, the 'elder generation' return to their homeland, so, it seems, many Americans we have worked with in China, in Hong Kong, are also going home.

Alas, China is simply not retirement home for most Americans we know. This year, perhaps more so than in the past, a large number of clients are preparing to enter the next phase of their lives, as they plan to return, to 'go home'. For those of you who are either already in this 'return-phase mode of life' or are soon to enter it, we devote this section. Here are thoughts we have on the subject, not in any particular order.....

- Have you re-established credit in your new home? What's that you say, you have no credit card or credit? Plan ahead and get back into the system! Get a U.S. address (not P.O. Box # credit bureaus don't 'recognize' a P.O. Box as an address) – use an address from family or friend or possibly rent an address. Apply for credit well ahead of your intended return to the States. You might find you are forced to pre-pay to establish credit and get a credit card or debit card at the outset….if you have to do so, then do it – you have no idea how unbelievably difficult life can be if you do not have a credit card from day one!

Once you've gotten back to the States (if you have not done so, already), set up banking. When you go into your new, neighborhood bank and provide them with a copy of your latest tax return (three years would work better!), be prepared for the officer looking at your paperwork not to have the faintest idea of what the foreign earned income exclusion is and why your adjusted gross income is so low. Over the years, we have had to write far more letters of explanation in this area than we thought imaginable - perhaps you, the reader, should look at your prior tax returns and anticipate questions in this area that you can also answer! Banking requirements in the U.S., by the way, are far easier than outside of the U.S. where one of the unintended consequences of FATCA is that Americans overseas face financial discrimination.

Two summers, as a 'student' attending summer writing workshops at the University of Iowa in Iowa City, IA, we discovered that with our student ID, student housing address, a driver' s license and a Social Security number (NOT a Social Security Card - we could have used any number, real or not!), we could easily open a bank account with any one of a number of banks, none of which would have any inkling whether or not we were a U.S. citizen, because no one ever asks for passports. Nonetheless, requirements do change, so if you do not have your banking set up, the earlier you know what will be required of you, the better off you will be.

- Do you have your local driver's license? Since age 17, we had our California driver's license. We still have a Hong Kong license, although this will expire next year and we do not plan to renew it. A few years back, we let the California license lapse, realizing that at this stage of life, we would be more of a menace on the freeways than anything else and as we did not really anticipate returning to live in the States and not needing it as identification it was easier to simply let it lapse. Do you need to drive or do you need a driver's license as identification? What are the requirements for you to secure a new license if you have not renewed your old license?? Go online and find out in advance.

- Allocate the time necessary, at the very start of your return to U.S. residence, to find housing and sign up for utilities, for cable, for the internet and anything else that comes your way for which you did not anticipate. You're going to need that credit card, here….. and will need your U.S. check book. So unless you are paying cash for everything (I wouldn't advise it) then get you banking needs taken care of, first! Then, remember that finding either temporary or long term housing does require some time as well as the time required to sign up for utilities, transportation, etc, etc. Yeah, transportation – how many in your family? Who will need cars? Lease or buy? Have you planned for this? Know in advance what will be required of you for each of these areas, be prepared.....and allocate sufficient time to do it all.....believe us, it is a heck of a lot easier to plan ahead!

- For your first partial year back in the States (unless you actually left your overseas residency on 31 December), are you aware that you will only have partial year Foreign Earned Income/Housing Exclusion and that you will have to file under the physical presence test? This is an area that seems to be a 'rude wake-up call' to returnees that they are subject to taxes on income they'd grown used to excluding. And while we are in this area, welcome back to Social Security and federal income tax withholding obligations if you are going back to work in the States. There are requirements, stateside, that you likely did not have for some time and are going to have to get used to, again, if you are still working.

- Have you started collecting Social Security? Are you soon to file for this? Go to the Social Security website www.ssa.gov .....find a professional who can assist you in getting through the maze of paperwork you will have to file. If you are returning to the U.S. with expectations of soon starting to collect Social Security, then make sure you have your bank account set up so you can receive your monthly payments! And obviously related to this are Obamacare and Medicare!!! We, the U.S. expats of this world, cannot avail ourselves of Medicare unless it is in the U.S. Our Social Security deposits nearly, but not quite, cover our medical insurance, overseas, so we can have care, if and when needed, outside of the U.S. Yet that is our choice - we've 'opted out'. And we are exempt from Obamacare but still have to file the new Form 8965 which will be attached to our tax return in order to prevent being penalized. What about you - have you opted out? Do you have to or want to opt in? These are some choices that you will have to confront.

- Do you still have financial interests outside of the U.S.? You are still liable for reporting them! What is important, though, is your bringing your financial assets back to the U.S. while being in compliance with both the laws of the country from which you send the $$$ as well as your U.S. home. It is a heck of a lot easier if you've been reporting these assets on your annual U.S. income tax returns. If you have not, then definitely consult with a professional! And while we are in this area of discussion, do you have a will? Is that will valid in the jurisdiction you came from, prior to returning to the States? If your time is up and there are assets in your own name in that foreign land, you definitely do not wish your family to suffer the agonies of foreign probate in addition to your unplanned demise!

- You are going to be under the tax umbrella of a new IRS district. It ain't gonna be like before, as an expat filing to a specific section at the Austin, Texas offices of the IRS. True, the number of tax audits in the U.S. is way, way down, but a tax audit is far more frequent in the U.S. than it is as an overseas tax filer. Is your record keeping done correctly or will lack of maintenance of records come back to haunt you in a big, big way? Only you can best assess this situation!

- I think there is likelihood that your new State tax bureaucracy will contact you, asking why you did not file prior year state tax returns. Don't ignore this letter as it'll be a real pain in the ass situation if you do. Answer the truth: You've lived overseas, had no income producing assets in that state prior to moving there.....

- Are you sure you are making the right decision? Have you adequately planned for the future? We know of people who have returned to the States and found the happiness they anticipated. Sadly, we also know of many who did not plan for their next stage of life - either with regard to where they were going to live or what they were going to do with their lives.

Planning ahead - some 'lifestyle' choices will have to be made!

- Financial strategizing for whatever you plan to do in the future is necessary. What do you envision your lifestyle to be like? How much will

that cost you - on a regular, recurring monthly basis? Have you included all the costs based upon where you want to be living? Once you've done that, then you have to look at what you can afford now.....and what you believe you can afford 'x' number of years from now – especially since life expectancy is now far longer than we probably planned for. If you are still young, with children in middle and high school and you are going back because of higher education, are you aware of what it now costs to get a kid through school? How many kids do you have? What will you be able to afford? On the other hand, we have clients with kids fully grown, with retirement on their minds. They are moving to Manhattan. They'll have that extra bedroom for the grand kids but otherwise, their costs are different than those with family. They've been outside of the U.S. for decades but already own the mid-town Manhattan apartment where they plan to live. They have the funds and they can afford it. Happiness is your being able to afford your lifestyle. Have you successfully reconciled that point between the lifestyle you desire and the lifestyle you can afford? "You can't always get what you want, but if you try, sometimes you find, that you get what you need."

- How long have you been living outside the States? How often have you visited? Do you want to visit? Are you climbing the walls after a few weeks visit? Have you heard these questions before? What are your experiences in this area? We ask because the cost of moving is expensive - very, very, very expensive. If there is any doubt - the least bit of doubt - then maybe you should try a rehearsal: rent an apartment or home in the area of your choice.....live there for a few months. What's it like? Is this for you? If so, then what better reaffirmation of your feelings can you get than through this 'dress rehearsal' of life someplace else? And what if it turns out that you can't get no satisfaction (thank you, Rolling Stones!) from this choice? Well then, our friends, 'trial run' is a hell of a lot less expensive as you make changes to your life. No satisfaction? Look elsewhere instead of locking yourself into someplace where you really do not want to be!

- What are your routines? Day in, day out, life is divided into the various and sundry routines we perform over and over and over again. We worked full time for a long, long time and filled our days with work-related routines. After 48 years of doing tax returns, we can honestly say that we hate taxes but will continue to do the work on a part time basis because, we believe, it is the mental activity of tax that keeps me young and on our

> toes (it is writing tax books that is downright masochistic!). It is what we do with that non-work time that must take some effort to fill because releasing yourself from prior routines without 'replacement routines' is quite difficult but the alternative is that lack of routine will eventually make life boring and one does tend to age with boredom.

Some structure in life is necessary. Routines serve a definite purpose and we all have to continually discover new ideas. We've seen some young, dynamic individuals grow old, fast, because they did not replace their routines in life.

If you have not given this area serious thought, perhaps you should do so.....

EXPATRIATION, AS AN ALTERNATIVE YOU MIGHT SERIOUSLY WANT TO CONSIDER…..

In October, 2013, BBC News Magazine published an article: "Why I gave up our US Passport", listing 20 individuals from 8 countries and their reasons for expatriation. The overwhelming common reason for expatriation is the difficulty in being able to lead a 'normal' financial life outside of the U.S. because of FATCA.

On 26 December 2014, The Wall Street Journal published an article: "A Clumsy Law Makes U.S. Expats Financial Lepers". This article discussed FATCA, the difficulties it imposes and its becoming the catalyst for the truly unintended consequences of more American citizens giving up their passports than ever imagined. There are other very valid reasons to expatriate but the financial burden seems to be the straw that is breaking the proverbial camel's back in that final decision to expatriate.

To me, there is nothing more patriotically thrilling than the Star Spangled Banner before a baseball game. We love going to baseball games in either Japan or Taiwan. The games are great but it is just not the same feeling. We've lived outside the U.S. for close to a quarter of a century and we too, have seriously considered expatriation as an alternative. There is a heck of a lot of logic involved in making a move like this. But it is those emotions (i.e. the pre-game national anthem) that overcome logic when making a choice like this. It is truly the 'the ultimate experience.'

For naturalized U.S. citizens giving up what they've worked so hard to attain, going through this process is like taking a ride on an emotional rollercoaster. We have 'hand held' more than a few expatriates the night before their final meeting at a U.S. Embassy or Consulate. Perhaps this is you:

Were you amongst the 'best and brightest' from your homeland, leaving for the States during the 1970s when there was so much uncertainty regarding the future? Have your returned to the land of your birth, now that your children are grown and have lives of their own? Are you concerned about your ongoing US tax obligations even though you are no longer there? If all this applies, then this section is especially for you.

We initially wrote the following article for our 2011 book. We updated it and it became our subject in 2013, when we spoke in New Delhi and Mumbai. Modified again, it appeared in our 2013 book and here it is again, revised, updated, etc, etc, for 2015. We will continue to use India and those NRIs (non-resident Indians) returning as the example in the essay. But we ask you, the reader, to substitute your homeland instead of the Indian homeland we used as an example – In essence, this is universal!!!

Do expat Americans even 'count' (a side-comment that actually has nothing to do with this section but we want to include it, so here it is)?

One author adds: Every ten years the U.S. has a census. We remember visits by the census taker in 1980 and 1990. Thereafter? Way back in that 'ancient era', every single U.S. citizen was documented beyond belief except for those living outside of the States. To be specific, counted in the U.S. census is every U.S. RESIDENT on census day, citizen or not, legally present or not. Overseas military and dependents, and other federal employees based overseas, are counted. U.S. civilians abroad are not – but then, neither are residents of the District of Columbia, Puerto Rico (home of the Taxpayer Advocate Service!), Guam, etc. – because these areas do not have voting members of the House of Representatives. – Taxation without representation?

Enough of a digression – let's get back to that old time census: Way back then, I remember a census taker coming to our house. No one came or counted me as an American in 2000 or 2010. On 18 June 2014, John Koskinen, the person in charge at the IRS, stated that there are 7.6 million American citizens living outside the United States. There are States with smaller populations! Our friend mentor and tax guru Marshall Langer likes to tell the fantasy tale of all those expats being able to register to vote in Wyoming and thereby electing their own members of Congress. It is a great cocktail hour story! Alas, we as expats are not counted and frankly, we do not feel that the U.S. Congress thinks much of us - other than as a tax revenue source. Such is life. Perhaps that is one reason why expatriations are in record numbers.

I have helped U.S. citizens expatriate for a number of years. We wish this volume of business happened 10-15 years ago, rather than today. While we never plan to retire, at this stage of life, there are other things than taxes and frankly, there's something wrong with the system "when here I am", at retirement age, in demand like this.

There will be a growing demand for 'specialists' assisting those wishing to surrender their Green Cards or their U.S. passports and give up their U.S. citizenship. Two cases We've worked with involve a client in Europe who has not been back to the States in

over a decade; she's lived outside of the U.S. for over 30 years and defines her nationality as where she's earned her income; where she raised her family….and a Hong Kong expat, a long term expatriate who has returned to his roots. While visiting the States once a year, he could not possibly conceive of living anywhere else than Hong Kong for the rest of his life. Both of them expatriated for non-FATCA reasons.

Hey, they both still are rabid baseball fans who will always feel very American when the Star Spangled Banner is played before a televised game – yet they both would rather be 'involved citizens' of where they have moved to, earned their income, raised their family.....and called home. There is absolutely nothing 'unpatriotic' about any of that!

Let's look, now, at another type of expatriation. Let's look at a hypothetical Indian couple who emigrated to the U.S. long ago and far, far way, when it was too economically good to turn down. They had no future in their homeland and they sought and attained the American Dream. They are looking to retire.

Along the way, those U.S. NRIs – non-resident Indians - parented children who have their own U.S. passports and are happy to be living in the States. But those 'old folks' (hey, we're not old!!) have returned to India. Yeah, they still visit the kids and grandkids in California and are likely involved in India in some aspect of business. They also have 5 or 6 foreign bank or brokerage accounts. Frankly, they are well off but now, primarily because of FATCA imposed limitations, they have enough to think about whether or not it is worthwhile to maintain their U.S. passports. They are also discovering that they may currently be in violation of some U.S. tax laws because they never knew that those laws existed. They really don't want to be in violation of U.S. tax law or any country's tax laws and thus, are now interested in opting out of the U.S. system.

Tax expatriation - yes, but you've got to 'surrender' to the IRS, as well.....some of you just might have to pay to get out.

Here are eight areas that the prudent individual 'weighing' expatriation, must review prior to making that decision.

Residence - If you give up either your green card (there's a similar process involved here, too) or your U.S. passport, you MUST be aware of what spending too many days in the U.S. means - you truly must be resident elsewhere (and not visit the kids and grandkids too much).

Domicile - If you own property in the U.S., it had better NOT be listed as your primary residence for tax purposes.....You MUST terminate your domicile in any U.S. state or

territory…..you're probably going to have trouble 'extricating' yourself from either California or New York, tax-wise, as neither state, both technically insolvent, really wants to let go of you if that is where you were previously domiciled.

Citizenship - Before you can get out, you've got to have another passport. The U.S. will not let you expatriate otherwise! You, the Indian NRI –especially if you are financially well off – can continue to be NRI – you can buy citizenship (legitimately, no kidding!) from another jurisdiction. Once again, we caution you to seek professional advice in this area.

Marital status - Do you own anything with your spouse that is held as community property? If you own anything in California, be aware that the Golden State is a community property state, which means that you might not avoid California trying to tax you: *"Welcome to the Hotel California. You can come any time you like but you can never leave."*

Source of income - I have a bank account in the U.S. that I use to collect Social Security. That is our only U.S. 'exposure'. We know non-resident aliens who maintain U.S. brokerage accounts as well as bank accounts and have to file that awful 1040NR return - so yes, if you want to extricate yourself from the U.S. system, be prepared to truly minimize any holdings.

Location of assets - Have you got U.S. property - or a small business - or rental assets located in the U.S.? In case something happens to you, do you have a will? Or an inter-vivo trust?? You've got to consider this unless you wish to encounter the U.S. system of probate. Definitely speak to your attorney about this one!!

Timing - Tax law, between now and 31 December 2015 is pretty certain. But beyond that date? I wouldn't bet on maintaining the lower long term capital gain rate of 15 percent, which we now have....so make sure to consider the following: President Obama, in his State of the Union address 20 January 2015, proposed some bold 'adjustments' to the U.S. tax system. Realistically, though, with a Republican Congress and a Democrat President can compromise be reached this time? While I doubt that, will the tax aspects of 20 January 2015 carry over as a central campaign issue of 2016? What does the tax future portend? If you decide to expatriate, should you do it now or later?

Status of beneficiaries - Your American offspring – both children and grandchildren – may generate that proverbial fly in the ointment if you don't plan your generosity. This is no fly, actually, it is a tax eating fly-trap! Gift and Estate tax matters should be discussed

with a professional because you could at some time be in violation of U.S.gift or trust tax laws without your even knowing it!

II) **Tax liability upon expatriation – so what's it gonna cost ya? O.K. – here are the nuts and bolts in as good an executive summary as you will find!!**

A. **Covered Expats - these are the people who are taxed** If you are a U.S. citizen who is giving up your passport or you are a long term green card holder who has maintained his/her green card for 8 of the past 15 years. You must assess your situation to determine whether you are or are not a covered expat. There are two categories that determine whether you are covered or not:

   If you expatriated during 2014, you are a covered expatriate if your average tax liability for years 2009 - 2013 was **over** $US157,000. Hey, I would settle for annual income of that amount! Take a couple of seconds to imagine the income necessary to incur a tax liability like that! If you even come close to this amount, you'd better see a professional about this matter in addition to reading our book (which I unabashedly claim to be a great piece of writing!). If you are like the huge majority of us falling under this average, then beware that you might still 'qualify'

If you have net assets, worldwide, of $US2 million or over, you are a covered expatriate. This amount is far easier to reach than you can ever possibly imagine if you live in China or Hong Kong, where real estate is traded like a commodity or stock – frequent, furiously and with a gambling reckless abandon. Lots of people I know in this part of the world have become rich, on paper, because they purchased their home instead of renting it. They have owned their home for a decade – time goes by, fast. There are a lot of paper multi-millionaires around and that can cost them by making them a covered expatriate.

B. **What you will pay as a covered expat** - The first $US680,000 of net assets are tax-free. Gains over that amount are taxable at long term capital gain rates which will go up after 2014 – you can bet on that one (in spite of the protestations by Congress that they will not increase – I remain cynically skeptical)! Your net worth (with back-up, substantiating data if it is sizable), assets at fair market value less basis and liabilities is reported on Form 8854 (next paragraph!) and taxable gain then is transferred to your 'final' Form 1040 with special filing procedures.

C. **Form 8854 -** This is the form you've got to file with the IRS after you've surrendered your passport and received a Certificate of Loss of Nationality that will be mailed to you after turning in your U.S. passport or if you turned in your green card you will be given a Form I-407. These forms, are issued by the Department of Homeland Security and the State Department. A copy of the respective form must be included with your Form 8854 when you file it. The 2014 Form 8854 is 6 pages. Instructions for 2014, issued 20 November 2014, are 10 pages long and are available on the IRS website. For what it's worth, it is our opinion that Form 8854 is as poorly constructed a tax form as you'll ever see. We defy you to read and comprehend the instructions for this form: it looks like English…it sounds like English….but I, for one, have extreme difficulty in trying to figure out what it all means…..

Everything you own should be included on the balance sheet of Form 8854. The ONLY items specifically excluded would be any interest you might have in non-grantor trusts or if you are eligible for deferred compensation or some pension plans and profit sharing plans where the AMT would apply. Obviously, if you possibly might have this 'problem', then you'd best seek some professional advice, first!

That balance sheet/net worth statement has got to be as of the day before you expatriated. If you have any U.S. assets, it would probably be advisable for you to have appraisals for these assets - especially if you are a covered expatriate.

D. **Tax due on expatriation but you cannot pay it?** Here's an interesting case: I know of a situation where a husband and wife team travel around the world and spend more time in the wife's European home, running an eBusiness as they travel. That business is a 'recognized' entity with a definite value, a high value compared to the cash poor client. He wants to expatriate but does not have the bucks. There's a real nice provision here enabling you to elect to defer paying the exit tax on specific assets, by signing away, with

sufficient security (security bonds come in handy, here), iron clad, lifetime contracts, assuring the IRS of the money, in due time.....this will not, though, exempt you from the annually accruing interest you will owe on this loan. Sounds simple and logical, right? Only with the IRS's budgetary cutbacks, I have a sneaking suspicion that it will be next to impossible to get any response from the office specifically designated to handle this task. It was difficult before and probably will get worse in the future.

E. **Don't get trapped by the substantial presence test!** If you spend too many days in the United States, regardless of whether you've expatriated, you're subject to U.S. tax. This test generally permits you to spend an average of up to 120 days each year in the U.S., without being treated as a resident for U.S. tax purposes. This test is based on a moving average of days you have spent in the U.S. over a three year period. Better make sure you have not violated those days as it could be quite costly!

F. Gifts or bequests of over $US14,000 per year to any one person in 2015 have to be reported!

You've made your money and have returned to your roots. You're U.S. passport holder who has kids in the U.S. You are turning in your passport but have some valuable assets outside of the U.S. which you want to give to your kids or grandkids. All gifts or bequests exceeding $US14,000 in 2015 to any U.S. citizen or U.S. resident, made by you directly have to be reported. If you are still a U.S. citizen, then Form 709 must be filed. If you've already given up your citizenship, the recipients of those gifts have to report using Form 3520.

Don't forget the $US5,430,000 lifetime exclusion from gift tax effective for 2015 – if you've got it, then give it…..especially this year because it just might disappear in future years! And if you are going to expatriate, give first!! What's that you say? You have those bucks but never thought of either gifting or managing your assets? Well, re-think, our friends!

Once again, a reminder: if you are thinking of expatriating and are only following this book rather than consulting with a professional in this matter, then you are asking for trouble! Remember – you get what you pay for – spend a bit more than you paid for this book – it's worth it!!

SOUND INTERNATIONAL PLANNING IN THE MIDST OF A WORLDWIDE DEPRESSION –

Why are there so few of us out there, willing to call it as it is: we are in a depression, folks, and things are going to get worse before they get better. This subject was our keynote speech at tax conferences in New Delhi and Mumbai a couple of years ago and we have subsequently spoken on this subject, elsewhere. That speech has been transformed into an essay for this book. Is it about U.S. tax? Heck, no! Yet the response we got to those first speeches in India was really good and gave me some 'food for thought' that this just might be some worthwhile reading matter for U.S. tax filers, wherever they may be…..Speeches do not work as essays – as much as reading an essay will not work for a speaker. Thus, we are taking the pains to continually change this speech into an essay – we hope we're successful…..but only you can decide!

What is sound and what is not sound at the present time? Can anybody really determine this? We're going to mention a 'real life situation' as our first example – actually, we plan to include numerous 'real life' examples that we can relate to…..enjoy reading instead of watching television: reality essays are superior to reality tv!

On one of those absolutely wonderful autumn days, over perhaps too-filling a dinner in the Main Dining Room of the Foreign Correspondents' Club in Hong Kong, we met, wined and dined with two gentlemen, friends, fellow old-farts, clients – the combination of which makes working through live so very, very enjoyable. The conversation we had far overshadowed the wine and food!

'Tom and Jerry'- these are the aliases we'll use for them.

Tom, in this case is retired president of a prestigious southern US university. He's also a professor emeritus of one of the foremost business schools in China and is currently teaching and assisting with the development and expansion of another school of business in south China. He has made some extensive studies and analyses of business and development in Macau and is a 'source' of information regarding Hengqin Island, off the Cotai Strip of Macau.

'Jerry' was part of the US Embassy's initial commercial staff when the PRC and the US resumed diplomatic relations. He subsequently went on to become the economic advisor

who ‘brokered’ some very big financial service organization joint ventures between the international investment banking houses and entities in the People’s Republic of China. He is now CEO of a South China-based financial services conglomerate which, among other things, owns a bank in China.

Banking in China… We believe that banking in China is equivalent of the 'wild, wild west' insofar as the relatively unstructured but rapidly developing new business models to create the financial services industry of the future in China. The current 'big four' of banking in China: Bank of China, Industrial and Commercial Bank of China, Agricultural Bank of China and China Construction Bank will not, we predict, be the big four of banking a decade from now. Who will be at the top? We consider this to be entirely unpredictable and while its presence is certainly being felt, we do not even consider HSBC to have a lock on one of the top four spots a decade from now. Should we invest in banking in China? This could be part of our personal planning if, for no other reason than the fact that we know a lot of the facts: We’ve been a ‘student’ of the developing banking sector in China and we think we have far more depth in this field than most of the so-called ‘experts’. And, importantly, we know many of the ‘players’ – one does tend to meet people after living in China for a quarter of a century. Once again, the concept of being able to invest in an area you possibly have specialized in is something that you should look at carefully – why should we normally assume that the so-called experts have any better idea than you have – your prior knowledge is definitely your strongest asset (other than money, of course!) – look at what you might possibly be able to do because of an expertise you already have acquired!

Anyway, let’s get back to our dinner with Tom and Jerry. Our subject matter was about the Qianhai new economic zone, a 15+ square kilometer area created by landfill, west of Shekou, on the east bank of the mouth of the Pearl River and about its counterpart, part of Zhuhai but closer, by far, to the Cotai Strip of Macau than it is to China, Hengqin Island, approximately 110 square km of-undeveloped island just waiting for the planners to take a crack at developing.

These two sub-cities were specifically mentioned in the 12th Five Year Plan adapted by the National People's Congress - the economic aspects of five year plans in the PRC are closely adhered to. There is a third sub-city that was also mentioned: Nansha, the southern-most part of the City of Guangzhou, which is the city where we live. While we are quite aware of what Nansha might be like in the future, this was not part of our conversation.

The State Council has just started issuing general guidelines for Qianhai and Hengqin. Short term investment in Qianhai and 5 year investment in Hengqin, because of both

jurisdictions being 'orchestrated' by the State Council would be worthy of consideration for one who can afford to do some 'speculation'. And believe us, the speculators are there, for land, if nothing else. Land on Hengqin is selling for 10 times the price it sold for three years ago!

A little more food and a lot more wine and the subject gradually turned to the subject matter of what the hell one can do during the current world economic situation – the global economy stinks and is not likely to get better for some time to come. So how do you preserve what you've got - if the times are not such that you have the ability for growth, at least how can you prevent 'shrinkage'? What would sound international planning in the midst of a depression be like for someone living in this part of the world (Asia)?

a) We are in such an economically screwed up world that long-term planning, at best, cannot really be relied upon in a truly 'long term sense' – because some of the best minds on the subject can't even give adequate answers for the short term. About the only long term investment that made sense if one could afford it was long-term real estate, not frequent buying and selling, Chinese-style.

b) Absolutely nothing has changed in close to a generation other than the fact that a couple of decades ago, we had a sound, regulated financial system and that a return to a regulated system separating the 'different' types of banking calls for the sound values and planning tools of the past….but that the bank industry in the U.S. is an effective lobbyist and we will sadly return to some rather dubious ways of old…..

c) That if the 'big boys' (i.e. Tom and Jerry) can't tell you, then how the heck do you expect me to tell you???

d) And yet, we are probably best able to 'tell you' because we've been doing international tax work for over 48 years, have developed sufficient cynicism to not be awed by any tax system or calls for basic fiscal changes.

Thus, here are some of our 'valid' thoughts…..

- First and foremost, let us quote Shakespeare: "Patience and patience and patience". Try to be 'cool', logical and willing to wait for those right moments in time to do something. Yeah, it's tough to overrule the emotions, but being logical and using time to your advantage really works!

- Yes, of course you should live within your means and save….but if you have something left over, after putting something in savings, then perhaps you can take higher risks than simply giving your money to a bank. There are values out there - there have always been values out there and there most certainly always will be

values for you to find….. and while ‘penny stocks’ are not what we have in mind, there are low cost, valid investments out there – you’ve just got to look a bit harder; you've just got to use some common sense and work out of logic than out of emotion. If the rich do this, then surely we, the ‘un-rich’ can do the same.

Case in point: Let us use the example of George Soros as the financial predator and the Glazer family as the prey. This was an actual event a couple of years ago. The Glazer family are the American owners of Manchester United Football Club, arguably the world's most recognized sports brand. Branding is the important thing - the better the team performs, the more uniforms and accessories it sells - that's where big time profit takes place. The post Alex Ferguson era of Man U management and dropping from the top of the EPL shows just how much a subsequent drop in revenue from branded sportswear sales can mean.

Anyhow, the Glazer family, tried to pull the wool over the eyes of a far more discerning Asian investor than they ever could have imagined and they had to withdraw IPOs on both the Hong Kong and Singapore stock markets. They hoped to continue using other people’s money to fund their international sports operations. They were entering into a bind – they needed some money and to get it, they had to bend.

Time and scheming finally caught up with them once they were a bust in the Asian IPO market. In desperation, they did a NY IPO and in came that financial predator, George Soros, who looked at the numbers and found that this last ditch attempt to bring in some money was turning Manchester United into what was now, actually, a good investment. George became that proverbial fox in the hen house – he simply had to show some patience prior to pouncing upon the most productive of the hens. Much to the chagrin of the Glazers, Mr. Soros is now an 8+ percent owner of Manchester United - which he bought at bargain price.

- Value is out there - you've just got to look for it! Value investing applies to the small investor as well as the big investor. True, there are far more limitations as to what might be available to the small time investor but there are, nonetheless, some very good bargains out there! Value investing got its burst of buzzword popularity from Warren Buffet who has not always practiced what he preached but the preaching will always make sense……look for the long term value!

Remember, though, you've got to know what you are looking for. There are far more areas where you can invest than you have the time and resources to adequately oversee your investments - do you want to take an active role? If so, then determine your strengths! If your being an active investor is not quite what you want, find those who you

can trust – never underestimate the value of trust – have the patience to find the right person or persons for you…..that is important!

How old are you - age does make a difference!

Ah, to be young, to be in the midst of world economic turmoil and to have found a place to move to, to start over, to invest for the future that is far brighter than one can envision for him or herself at home. We're speaking from experience, as we made a life changing decision when I came to the 'new land' of China from a secure yet very unhappy situation of life in the U.S. We were at that stumbling block of life where we knew that a change was essential.

This is something that happens to far more people than you can imagine, generation after generation. We worked in China with an American Non-Resident-Indian who graduated from Louisiana State University and was sent to China to oversee manufacturing for an electronics conglomerate that hired him right out of university. He eventually jumped across that Pacific 'pond' from China to Silicon Valley in the mid-90s and called many of his friends from India to join him in the land of opportunity. He got them their initial jobs. The company went public. Some stayed with the company, others ventured out on their own. With all the problems both the U.S. and California are confronting, economically, they still are lands of opportunity where you can develop a new idea and find the funding to perhaps make that dream come true. Ask those who have gotten their green cards, waiting patiently to do so – this may very well be the 'ultimate' investment based upon sound international planning that you can possibly make!

One author concludes for all of us:

What about old farts like me? We are two generations removed from those brave, venturesome children of our homeland who are now setting out to discover the world. True, we were once like that but our-oh-our how things have changed! Let's face it: our current needs are completely different and the last thing we can conceive of is taking risks like that! It's nice to know, though, that we were once the 'pioneers'.
and that you were also the best and the brightest of your generation.

The best and the brightest….. in the mid-1970s, if you were in India, the Emergency hit and you left. You settled down in the U.K. You started anew in Canada. You became US citizens. Many of you did very, very well – you raised your families in your new land and now are back home, in India, where you really want to be....within the confines of being an NRI, of course..... We know – after years of writing for Tax India International and

visiting India, We've got lots of you who are readers – and you like to communicate! You don't have to be from India, though, we know of a lot of Israelis and Taiwanese who left for the States in the 70s and are now coming back to the places where they grew up.

Some of you are discovering that your US tax obligations - now with extortion-like penalties for failure to report - are such that you are ready to relinquish your green card or your passport....ah, but those with U.S. passport need another passport to replace their US passport.....This is all part of planning. This, at the 'opposite end of the spectrum' is the 'ultimate' investment those of us of the 'golden generation' can make – investing in a new nationality, in a new lifestyle! It's obvious that sound planning must be based upon your needs, the affordability and you have got to recognize that age has a lot to do with it what you could have done, what you should have done a decade ago no longer applies. What you do, now, is set the stages for living the so-called retirement years, even though you have absolutely no intention of ever retiring!

Life is good!

Let's be frank: there are new, onerous U.S. tax laws that we must confront. The future portends that nationals from many countries are going to be confronting new international reporting requirements. This in no way (other than having more forms to fill out) should preclude us from using our funds to invest. Just make sure that you report what you are supposed to report; that you should strive for tax avoidance but avoid tax evasion: Tax evasion is wrong – it is against the law. Tax avoidance is legal!

Apple…..Google…..Starbucks…..they've all got something in common – they all take advantage of international tax treaties to minimize their worldwide exposure to tax – particularly U.S. tax. Apple Computer, apparently has read all the tax treaties and exchange agreements that have ever been written! How many of you have Apple products? Have you ever noticed that those apps you purchase for your iPad or iPhone, while most likely developed in the U.S., are paid for through a Luxembourg corporation? Only when Apple takes some of these funds back to the U.S. do they pay any tax in the U.S. Thus, re-structures to a jurisdiction with tax benefits is something that those who can should definitely plan for! Remember: this is tax avoidance – it is legal and you can get away with it! Starbucks, through its royalties paid through a tax favorable treaty, has only had 3 profitable years in Great Britain and thus, has had virtually no tax in the U.K. while its British equivalent, Costa Coffee, has had more than its fair share of taxes paid. Tax avoidance – most certainly part of the Starbucks financial equation….but now that they've been caught and are seeing some outrage about it in England, they will have to pay something to repair its public relations damage after this was recently revealed. Be

like Starbucks – plan to avoid taxes wherever, whenever you can – just remember that you cannot evade them.

Who are you planning for?

Just a tad bit more than a short half-decade back, the world was a financial bubble just waiting to burst. Only greed seemed to get in the way of our collective, rational economic and financial thought processes and look at the fine mess we have, now.

France and England are taxing more as their preferred method towards recovery. Five – six years ago, the thought of a French President backing a 75 percent tax on the country's wealthiest was unheard of. A half-decade ago, the CEO of LVMH, the world's most prestigious branding group would never have entertained the thought of changing citizenship from France to Belgium. Nor, for that matter, would a fat, ugly French actor seek Russian citizenship. Obviously, for those who can afford it, international tax planning must be part of the planning equation! Change of citizenship, of residency, of domicile are part of the planning equation. Did you inherit your wealth (assuming, of course that you have some wealth, to begin with) or are you 'self-made'? You don't lose your patriotic feelings when you change your passport: I am a U.S. passport holder.

Ask yourself: what if our planning is just for ourselves and I am going to stay where I am, currently. We anticipate living longer, now. Have I provided adequately for ourselves over an extended period of time? What happens when I am no longer working?

- Who else might we be planning for? First and foremost, I have to plan for our wife!!!!! What about you? If you have children – regardless of their age, because they are, have been and will always be children to you, you want to plan for them. What about your kid's kids? If you are lucky enough to have sufficient assets for generation-skipping, tax-free transfers, then this is something you must take into account – especially if you have low expectations of your kids being able to do much more than squander that which you've worked your life in accumulating.

- Do you have a will? Have you planned for the worst case scenario; that you and your spouse could pre-decease your non-adult children? This is crucial!

Have you done some succession planning for your business in the event of your untimely demise? If your kids are still minor children, who's going to raise your kids if you are not around? If you can afford it, are you now ready to look at setting up either a trust or a foundation to take care of things like this? For that matter, how well do you understand the concepts of trusts and foundations and how they now can be essential tools of wealth preservation for your own business, as well - not just for your client!

For many of our clients, that business is the primary asset of the client's total net worth. Planning to preserve the current value of that business is absolutely essential!

And if we have property in other jurisdictions, we have to have wills specifically tailored to those jurisdictions. Why? Probate, that's why! At all costs, avoid probate! Sometimes we question what is worse: an IRS audit or probate! Having been a Probate Court Referee in California for 18-1/2 years, we can say, without hesitation, that an IRS audit is preferable!

Our advice on real estate investment around the world? We recommend it. Frankly, long term real estate investment is the only thing that has worked consistently for me throughout our life. It is as if we have that touch of 'reverse-alchemy' for every other form of investment. If it is gold when we buy it, it turns rather smelly, fast! If you have not considered long-term real estate and can afford to diversify in this area, then seek out the real estate culture, overseas, that you are most comfortable with and look seriously at real estate as sound planning as part of a diversified portfolio!

Switzerland is not what it once was thought to be. Truth be told, if you wanted bank secrecy in Europe, then Austria has always been better than Switzerland. FATCA, soon, the OECD and tax information exchange agreements have changed the playing rules. While India has difficulty in understanding the concept of 'ex post facto' where information prior to agreement is not part of the deal, no longer will Indian citizens be able to keep things secret. For that matter, nowhere does secrecy truly exist, anymore. Secrecy is a thing of the past – even a jurisdiction like Mauritius is going to have to change as part of the so-called new world order. Mauritius will always have its advantages insofar as hiding Indian funds – let's face it, there are far too many legislators in the Lok Sabha, the elected lower house of India's legislature, who have Mauritius corporations and they do not want any change, whatsoever. Yet change is coming and that affords us with a new chance to do some treaty shopping. Singapore does not have as good a treaty with India as Mauritius does……but Singapore has, arguably, the best new-era 'opaqueness', of international banking in the world, right now. And oh what banking alternatives it has for the Singaporean company!

Just a few years back, Cyprus was the jurisdiction of choice for one investing in Russia. This too, has changed but so have many things with Cyprus, including its being on the verge of bankruptcy. Remember, when a company (or jurisdiction) goes bottoms up, financially, there are bargains out there!

There is, effectively, a new, economically viable, functioning country in this world; a country that is not even bothering getting diplomatic recognition. That country is Kurdistan. With Iraq and Syria in tatters, the Kurds have simply gone ahead and set up permanent shop. What is the best recognition? How about permanent offices of both FEDEX and DHL in Kurdistan? Or….what about Chevron or Marathon Oil? The oil conglomerates still rule a sizable portion of the world, whether or not we are willing to admit this or recognize this.

So why do we bring up these new 'realities' of the mid-east? Because they could perhaps be the necessary catalyst to finally find agreement between the Greek and Turkish communities that have –up-to-now – kept Cyprus from unification. This and the fact that there are likely to be sufficient shale oil and gas reserves within Cyprus territory that might make that nation energy independent. Thus, as a place to possibly invest in/as a place from which to set up an offshore entity, Cyprus could refreshingly make itself over and is a good example of where you need to explore for the future! Remember – there will always be good investments to be found – just use some patience to look for what you feel most comfortable with!

So what do you need in order to plan?

To start off, how about preparing a financial statement, a statement of net worth for yourself. And for this, we are truly talking about a 'real' statement of worth. We had clients, a husband and wife, both of whom were independently wealthy. They each had galleries and were in the art business. This was their second marriage, each having children from their respective first marriages.

Together, their wealth lies in art, an area of endeavor where, alas, none of their children have expressed a similar passion. They have co-mingled all their art and they know the values of each and every item….only absolutely no one else does. They obviously need to plan but before they do this, they absolutely must do something else, first: take pictures!!!

Then write on the back of each picture: they've got to write which spouse owns the art, approximately when and for how much was it acquired, approximately how much it is worth, now….and where to go to sell it. Once they've figured out how much the art is worth, they then can then figure out what else their combined worth might be. True, they've co-mingled their assets and their lives…..and good for them-they're happy! Yet what potential for a battle royale between the children if something happens to these parents and there is no clear path of subsequent distribution of what they've got. Can you be in a similar situation? Don't let it happen! Write down the necessities and you will

then have a far more meaningful idea of what the worth is but think of all the problems you have eliminated in potentially avoiding children arguments as to who owns what and how to convert that object of art to cash!

Post script to some practical planning (and a great excuse to purchase a new camera!):

Do you think that pictures were taken – or that anything has been done by this couple insofar as wealth preservation planning is concerned? And not for just this client but two other similar situations in which We've become subsequently involved. Sadly, nothing has been done. Yeah,we can only suggest to the client. If the client chooses not to take any action based upon our advice, such is life. If you are a professional giving advice to others, you've got to remember that this is still an area where logical actions sometimes never take place because of the emotional override. Do not despair – we can only do our best in this area while never forgetting that emotions will almost always override what we consider logical….don't give up – keep trying, as what you propose is simply the correct thing to propose.

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O.K. It is time to conclude this essay. This one worked as a talk, exceeding all of our expectations. Will it work as an essay? Only you can decide. Even if you find this one of little value, at least we believe you'll find it well-written! Sincerely, we hope that we have written something meaningful.

When we started this essay, we discussed the thought of starting out as if we were to prepare a Power Point presentation. Here's what we would use if we had to start off with 4 basic bullet points:

- Patience and patience and patience! The Bard was right – take your time in figuring out what you really want to do; where you really want to place your assets – and how you want to do it. There are values around – there will ALWAYS be values to be found. Take the time to find what is of value to you!

- Know what you want to plan for!! You need specific goals. We're professionals who work with wealthy people. It is our job to help our clients define these goals (and remember, these are the client's goals, not yours!). No goals? No meaningful planning!

- Age and timing mean everything!!! The goals of one generation are different from the goals of another generation.

- The form of re-structuring your holdings – and the choice of jurisdictions in which to do this will make a difference!!!! It is costly to do this but….no pain/no gain! And the future portends that as laws and systems change, periodic review of what you've set up will have to be more frequent as an inherent part of sound international planning, regardless of whether we are in a depression or not.

We leave you, now, with an image of optimism. How many of you have ever seen Charlie Chaplin's "Modern Times"? Art is a subjective value, not objective at all, in any sense: if you like something, you like it – let the critics be damned! Anyway, "Modern Times", set approximately 80 years ago during THE depression of the 20th century, is a classic comedy. Its ending had Chaplin and Paulette Goddard – to me, the most beautiful actress ever to appear in the movies – walking off into the sunset, looking forward to face the future, while Chaplin's song, Smile, played in the background. This wonderful melody, we are told, was also the hit background music of a Bollywood film from a couple of years ago. We obviously can't play our harmonica in an essay, but if you are familiar with the film and the music, then go ahead and visualize that picture and listen to the tune of hope at the end. Tomorrow is another day!!

What's that you say? You've never seen "Modern Times" – rent, buy or download a copy – you'll really enjoy it!

* * *

(see next page for update!)

FALL 2015 UPDATE –

CONGRESS JUST CHANGED MANY FILING DEADLINES

Many filing deadlines (other than personal) were just changed by Congress. The due dates for partnership and corporate tax returns were changed, and for those important foreign account FBAR forms, also known as FinCEN Form 114. The changes came in an unlikely vehicle, H.R. 3236, the Surface Transportation and Veterans Health Care Choice Improvement Act of 2015. That non-tax law also gave the IRS an increased audit period from three to six years in many cases. Starting after December 31, 2015:

- Partnership tax returns are due March 15, NOT April 15 as in the past. If your partnership isn't on a calendar year, the return is due on the 15th day of the third month following the close of your tax year.
- C corporation tax returns are due April 15, NOT March 15. For non-calendar years, it is due on the 15th day of the fourth month following the close of the tax year.
- S corporation tax returns remain unchanged—they are still due March 15, or the third month following the close of the taxable year;
- There are other rules too. C corporations with tax years ending on June 30 will continue to have a due date of September 15 until 2025. For years beginning after 2025, the due date for these returns will be October 15.

The due date for FBARs go from June 30 to April 15. And now you can even get a six-month extension, just like tax returns. Note that FBARs are important. If you had foreign accounts that in the aggregate topped $10,000 at any time during the year, you must file.

In fact, although many tax evasion charges carry the risk of a three year jail sentence, criminal FBAR charges can earn up to a ten year sentence. Even on the civil penalty front, FBARs are nothing to ignore. FinCEN now requires that you file your FBAR, Form 114 electronically.