LIBERIS LAW FIRM
THE BUSINESS LAWYERS

Call Us: 850-438-9647
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"Providing Legal Advice and Strategies for More Than 50 Years"

February, 2019

February is a Month of Celebrations

We celebrate Groundhog's Day; Valentines Day; Presidents Day, and Lincoln and Washington's Birthdays. In between celebrations, legal issues come up. Call us we are here to help.

FIRM ADDITION

Liberis Law Firm would like to welcome our newest attorney, Doug Golden. Doug is a 2004 graduate of Florida Coastal School of Law in Jacksonville, Florida where he served on the Law Review. The Florida Coastal School of Law program ranked in the top 15% of all Law Programs in the United States.

Doug was born in Hiram, Georgia and graduated from the University of Georgia in 2001 with a degree in Political Science.

Doug's areas of practice for the Firm include representation of individuals and small businesses with their corporate, construction, real estate, probate, and community association litigation needs.

Liberis Law Firm Team Member Highlight

This month we highlight Sarah Villaverde. Sarah joined the Liberis Team in 2016. Her Titles are Closing Assistant, Legal Assistant, and Receptionist. However, those titles do not nearly describe all the ways Sarah contributes to the success of the Team.

Sarah is a third generation Floridian. She was born in Orange Park and grew up in Gainesville. She is happily married with two amazing kids, Havana 13 and Anthony 10.

Sarah began her career in a small credit union where she processed mortgages. She then journeyed into real estate where she a champion.

Her favorite quote is, "The only place where success comes before work is in the dictionary." *Unknown author*.

NEWSLETTER PUBLICATION

A number of our clients requested that we recommence our Newsletter and we were happy to oblige. January's Newsletter went off without a hitch. The newsletter will be published on an irregular basis as we come across topics of interest that relate to our clients.

LET'S TALK INTERNATIONAL TAXES
FBAR & FATCA

By Kelly J. Gwin

Grab your coffee or your favorite rum drink and let's talk.

You achieved your dream. You bought a beach house in the Caribbean; or perhaps you bought a vacation home in Costa Rica or Mexico; you may even have been lucky enough to inherit a villa in Tuscany or a home in Greece. You opened a foreign bank account to pay the bills, have access to cash, or even just to deposit money from vacation rentals. *You now have foreign reporting requirements.*

Foreign reporting requirements were put in place to prevent U.S. taxpayers from hiding money overseas and to uncover what has already been hidden to avoid paying U.S. taxes. There is no place you can hide from the IRS! If you believe that you might be non-compliant, call us. We are here to help.

The key is to get compliant *BEFORE* you get any warnings or notification of potential non-compliance. Once you are on the radar, no penalty mitigation is possible.

Foreign Bank Account Reporting (FBAR)
Not Part of the U.S. Tax Return

It is interesting to note that FBAR form 114 is not part of the U.S. tax return. FBAR is a separate requirement with distinct and direct electronic filing requirements with the Financial Crimes Enforcement Network (FinCen). Further, there is no statutory authority to extend the time for filing and all requests for extensions are denied.

How Extensive is FBAR?

FBAR extends to U.S. citizens; U.S. residents; entities, including but not limited to, corporations, partnerships, or limited liability companies, created or organized in the United States and trusts or estates administered under the laws of the United States.

FBAR applies annually to any U.S. taxpayer with a financial interest in, or a signature authority over any and all foreign financial accounts with the aggregate value exceeding ten thousand U.S. ($10,000) dollars in one day of a tax year even if it is only for one minute.

FBAR form 114 filing deadline for the year of 2018 is April 15, 2019, which coincides with the federal income tax filing season. The April 15, 2019 filing date is mandated by Public Law 114-41, section 2006(b)(11). Extensions of time to file a U.S. tax return DO NOT extend the time to file form 114.

Non-Willful Failure to Comply - $10,000 Penalty

Non-willful failure to comply with the FBAR filing requirement can result in a civil penalty not to exceed ten thousand ($10,000) dollars per year.

Willful Failure to Comply - $100,000 Penalty & Possible Felony Charges

Willful failure to comply with the FBAR filing requirement can result in a civil penalty of the greater of one hundred thousand ($100,000) dollars or fifty (50) percent of the balance in the account at the time of the violation, for each violation. Criminal penalties may also apply.

One simple "X" can cause financial ruin! In *Kimble v. The United States*, No. 17-421 (December 27, 2018), the United States Court of Federal Claims held that a taxpayer is deemed WILLFUL when the Schedule B (Form 1040) "No" box is checked, even if the taxpayer never read the tax return prior to signing and submitting. In *Kimble*, the FBAR penalty assessed for one year was $697,229 for willfully failing to disclose the family's Swiss bank account and a French account.

Foreign Account Tax Compliance Act - FATCA
Attachment to U.S. Tax Return

You are going to need a sip of your beverage for this one. Not only is there FBAR, there is also a Statement of Specified Foreign Financial Assets known as FATCA. FACTA applies to taxpayers with foreign financial assets, that exceed the threshold. FACTA is reported using Form 8938 and attaching it to the U.S. tax return.

The value of the financial asset is the maximum fair market value reached during the entire tax year reported.

How far does FATCA Extend?

FATCA includes foreign accounts reported on the FBAR. FATCA applies to all accounts owned, even if the financial assets of the account do not generate taxable, reportable income.

FATCA extends to U.S. persons including citizens, resident aliens, nonresident aliens who have elected to be treated as a resident for the purposes of filing a joint tax return, and nonresident aliens who are bona fide residents of American Samoa or Puerto Rico.

The reporting threshold, valued in U.S. dollars, is different for married, unmarried taxpayers and depends on whether the taxpayer resides inside or outside of the U.S. The threshold value is the total value of the specified foreign financial assets, not the individual value of each asset.

Failure to File - $10,000 Penalty

The penalty for failure to file Form 8938 by the due date for your annual return (see below), including extensions, is ten thousand ($10,000) dollars. Continued failure to file within ninety (90) days after IRS notification earns a penalty of ten thousand ($10,000) dollars for each thirty (30) day period up to a total of fifty ($50,000) dollars.

An annual return includes the following returns:

Forms: 1040, 1040NR, 1041, 1041-N
April 17, 2019

Forms: 1065, 1020, 1020-S
Generally, the15th day of the 3rd Month after tax year end

Forms: 1020, 1020-S

Generally, the 15th day of the 4th Month after tax year end

Covered Over a Beverage

Foreign reporting requirements are complex. The snippet of information here is what can be covered over a beverage. We are here to help.

Kelly J. Gwin represents clients in Dispute Resolutions with the IRS, including violations of FATCA and FBAR as well as levy and lien issues at the State and Federal Level. Please contact Kelly should you require assistance in these areas. 850-438-9647 and **kgwin@liberislaw.com**

MY TAKE ON FBAR & FATCA

By Charles S Liberis

Historically there was no limit on the amount of cash a US citizen could take out of the country without reporting nor was there a requirement to report the existence of foreign bank or brokerage accounts (although you did have to report taxable income from them).

Bank Secrecy Act and the Tax Reform Act of 1986

The federal government began encroaching on our rights in 1970 with passage of the Bank Secrecy Act. That was followed by the Tax Reform Act of 1986 which made it prohibitively uneconomic for the small investor to invest in passive foreign investment companies(PFICs).

FACTA

The final nail was put in the coffin by passage of the Foreign Account Tax Compliance Act(FACTA) in 2010. FACTA puts the burden on EVERY foreign financial institution in the world to report to the US government the names of all US citizens who have accounts in their banks with a daily balance (for only one day) exceeding $10,000 or earn interest of at least $10 per year. The enormous regulatory burden on foreign banks by FACTA makes it virtually impossible for a US citizen to open a foreign bank account unless the deposit is large enough to justify the regulatory burden of reporting that is put on the institution.

Passport Revocation

It continues to get worse. Recent legislation allows the US to deny the issuance of a passport or to cancel the passport of anyone simply *accused* of owing $50,000 or more in US taxes(see p5 of your Passport US Government Property).

IT GETS EVEN WORSE - DO AS I SAY NOT AS I DO

Common Reporting Standard

To better enforce the FACTA regulations, the US government, urged the Organization for Economic Cooperation and Development(OECD) to adopt what is called the Common Reporting Standard (CRS) to facilitate the *automatic* exchange of information between taxing authorities regarding bank accounts on a global level.

To date 106 countries, including tax havens and offshore banking havens, have signed up and are currently exchanging data. Some countries that are not part of the common reporting standard are Cambodia, Georgia, Guatemala, Kazakhstan, Paraguay, Serbia, Ukraine and none other than the UNITED STATES OF AMERICA.

Well well the country that introduced the concept of the global exchange of bank information with FATCA is actually not a party to the CRS. Hence, the old saying: "what's good for me, not for thee?"

U.S. BANKS RELY ON DRUG MONEY FOR LIQUIDITY

It is interesting that the U.S. authorities can read the brand of a golf ball from a satellite 200 miles in space but cannot figure out where drug money is coming from. The U.S. answer to combat drug money is to monitor the accounts of US citizens in foreign banks! Monitoring private citizens' bank accounts screams invasion of privacy.

So What is it Really all About?

Allegedly the mission of monitoring private citizens' bank accounts is to combat drug trafficking, the money laundering that goes with it, and to deter tax evasion.

Is the War on Drugs Working?

The United Nations Office on Drugs and Crime (UNODC) estimates drug trafficking generated $ ½ trillion dollars a year while other sources such as *Forbes* estimated the dollar amount to be well over $1 trillion dollars per year.

So who are the real culprits laundering money?

* Bank of America was recently fined $76 billion

* J.P. Morgan Chase $44 billion

* Goldman Sachs $10.8 billion - Half of which was not even a cash settlement. $5.1 billion was satisfied by the bank providing financing

for affordable housing

<u>Right behind the US banks, come the international banks</u>

* HSBC, Barclays, BNP Paribas and Societe General

Can you imagine how much these banks are actually making off of money laundering when they are still profitable after paying these fines? As Antonio Maria Costa, the Executive Director of the United Nations Office on Drugs and Crime (UNODC), admitted to *Reuters* during the last financial crisis "in the midst of the current world financial crisis, drug money is, in many instances, currently the only liquid investment capital, with little unemployment, the drug trade at this time could be the world's only growth industry."

STOCK MARKETS

Banks are not the only culprits, the stock markets are being propped up by the billions of dollars that the narco economy is investing.

Here is an eye-opening question. Why would Richard Grasso, Chairman of the New York Stock Exchange, fly to Colombia to meet with a spokesperson for Raul Reyes of the Revolutionary Armed Forces of Columbia (FARC), the supposed "narco terrorists" with whom we are now at war?

A Real World Example:

Richard Grasso, of the New York Stock Exchange, and the Ultimate New Business "Cold Call" on Raul Reyes.

Food for thought. Was the purpose of the trip really "to bring a message of cooperation from U.S. financial services" and to discuss foreign investment and the future role of U.S. businesses in Colombia?

The truth! The stock market and our banks would likely collapse without the continued influx of narco dollars being laundered daily. That's my take on FBAR & FACTA.

Charles S. Liberis practices in the areas of Business, Real Estate Law, and Estate Planning. He has extensive experience in International Business Transactions and Foreign Asset Protection Trusts. Please contact Charles should you require assistance in these areas. Charles can be reached at 850-438-9647 and cliberis@liberislaw.com

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