US tax regime: comply or else...

WE WANT YOU: The US government is raising the bar for its tax payers to report on all of their worldwide income, assets and investments.

AT A US tax seminar held last month at the Holiday Inn, Patong, by the American Chamber of Commerce (AMCHAM) Phuket Chapter, American income earners and business operators were given a comprehensive update about the US tax regime's reporting requirements and regulations.

Two previous articles about the seminar – published in the Business section of the *Phuket Gazette* on March 23 and 30 – covered the Foreign Earned Income (FEI) exclusion, foreign tax credits and other related reporting requirements such as the Foreign Bank Account Reporting (FBAR).

This article will cover the reporting requirements for foreign held assets, as well as investments in foreign corporations.

The seminar's keynote speaker, John Andes, a US CPA and Thai-American partner with the Bangkok-based accounting firm KMPG Phoomchai Tax Ltd, covered a number of forms that Americans living or investing abroad should be aware of.

"Form 8938 must be filed by US persons with any interest in a Specified Foreign Financial Assets (SFFA), if the aggregate value of such SFFA exceeds certain thresholds," he said.

For single persons, or those married but filing separately, the SFFA threshold is at least US$200,000 aggregate at year's end or at least $300,00 any time during the year.

For married persons filing jointly, the thresholds are double.

In addition to this, certain US persons who are shareholders, officers or director of a foreign corporation (any juristic entity) may be required to file form 5471, which covers 'Investment in Certain Foreign Corporations'.

He said that there are four categories required to file this form, but generally, this is required to be filed by any US citizen or resident that is a director or officer of a non-US company, which has at least one US shareholder, who has at least 10% ownership in the value or voting rights of the company.

Form 5471 is required for any shareholder of a non-US company who acquires or disposes of a significant amounts of shares in the non-US company. Also, form 5471 is required where, under certain circumstances, American shareholders control more than 50% of a non-US company's shares, either by value or voting rights.

Failure to file forms 8938 and 5471 can carry a penalty of $10,000 per incident, and in the case of form 5471, also pose potential loss of foreign tax credits.

FORMS, FORMS AND MORE FORMS

In addition to the 8938 and 5471 forms, American investors may also need to report other types of foreign investments such as a non-US partnership (form 8865) or disregarded entities (form 8858).

Moreover, US taxpayers must report if they are an owner of a foreign trust, as well as if they had any transactions with foreign trusts, ownership of foreign trusts and gifts or bequests from foreign individuals (form 3520 or 3520-A for owners).

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>
> *– John Andes, CPA*

Even investments in non-US companies that generate passive income may be subject to additional reporting. In some cases, where an American shareholder receives a dividend from a Passive Foreign Investment Company (PFIC), the shareholder may need to report his investment and income on form 8621.

A PFIC is determined by meeting one of two tests. The first test is met if at least 75% of the non-US company's gross income is passive income, (interest, dividends, rent, royalty and/or capital gain income). The second test is met if at least 50% of the company's assets have generated or are expected to generate passive income.

Cash (generating interest income), buildings and land held for lease (generating rental income), for example, would be considered passive assets.

The tax on dividends received from a PFIC, under certain circumstances, can be very costly to the shareholder. In addition to the normal income tax, there could be additional liabilities imposed on the taxpayer. The additional liabilities may be avoided by making certain elections. This is a very complex area of tax law, which may unknowingly affect many investors in Thailand, especially those who invest in companies that own and rent real estate.

BANK SANCTIONS

Starting in 2014, as a result of the US Foreign Account Tax Compliance Act (FATCA), non-US banks, brokerages, mutual funds, asset managers and insurance providers will begin required reporting of information on many of their US account holders or else face stiff US withholding taxes on US-sourced income.

Financial institutions, if they elect to comply, must disclose information about accounts held by US persons, which have an aggregate value of at least $50,000 during the year.

Financial institutions that do not comply will be assessed a 30% withholding tax on dividend and interest income and on the proceeds from the sale of assets paid from the US.

The burden of FATCA is on the non-US financial institutions to comply. Indirectly, though, there may be a backlash to American investors and depositors if the financial institutions start to reject new accounts for Americans or ask existing American customers to discontinue their accounts.

CHANGES FROM 2013

The 2013 year introduced some changes to the taxation of American individual taxpayers.

Many of the "Bush tax cuts" stayed in effect after sunsetting in 2012, but there is now the addition of a 39.6% tax bracket for ordinary taxable income greater than $400,000 for single filers and $450,000 for joint filers. A 20% tax bracket was introduced in 2013 for long-term capital gains for these high income earners also.

In addition to these new tax brackets, FATCA imposes limitations on high income taxpayers in regards to certain itemized deductions, such as mortgage interest, state income tax, property tax and charitable donations. Deductions are lost at the rate of 3% of Adjusted Gross Income (AGI) in excess of $250,000 for single filers and $300,000 for joint filers. Also, medical expenses are deductible to the extent that they exceed 10% of AGI – previously 7.5%.

There will also be a phase-out of the personal exemption. Normally, the personal exemption is $3,900, but the exemption is reduced 2% for each $2,500 that your AGI exceeds the AGI threshold for deductions.

There is now a 3.8% surtax on unearned (investment) income applicable to those taxpayers with modified AGI greater than $200,000 for single filers and $250,000 for joint filers.

Medicare taxes will also increase. For those subject to Medicare tax deductions, the tax rate will increase from 1.45% to 2.35% on wages over $200,000 for single filers and $250,000 for joint filers. There will also be a new 0.9% Medicare tax introduced for these higher income earners.

On a positive note, the estate and gift tax law changes were welcomed by many taxpayers. The estate tax rate was reduced from 55% to 40%, and the lifetime exclusion was adjusted to $5.12 million for 2013. The annual gift tax exclusion increased from $13,000 to $14,000 for 2013.

CONCLUSION

These developments, as well as those described in previous articles, only focus on US federal income tax. Some taxpayers living abroad may also be liable to state and local income taxes. Clearly, the US federal tax rules are ever-changing and as complex as ever. For most taxpayers living abroad, the reporting requirements are manageable, but for many, complex tax calculations, difficulty in reporting information and not being aware of changes to the existing tax laws will cause them to seek assistance either from professional tax advisors or from the IRS directly. – ***Phuket Gazette***

For more info, see irs.gov; or call the IRS hotline on 1-800-829-1040.

CP All acquires Siam Makro

LAST week's 188.8 billion baht takeover of Siam Makro will allow CP All to open new cash-and-carry centers worldwide, except in India.

CP All is a retail arm of agri-food giant, Charoen Pokphand Group, which is also the third-largest operator of 7-Eleven convenience stores in the world.

Korsak Chairasmisak, CP All CEO said that the deal, which took only 10 days to negotiate, comes with the right for his firm to open cash-and-carry wholesale centers under the Makro name anywhere in the world outside of India.

However, he said that the immediate focus on expanding Makro stores will be in Asean countries, especially Laos and Vietnam, as well as China.

The company will also cash in on Siam Makro's strategic growth in the local hotel, restaurant and catering industry.

"We expect economic growth and civilization to come into the region along with the AEC, which is in contrast to Europe and the US which are facing a recession."

Demand is strong for Thai products in many neighboring markets including Laos, Cambodia, Vietnam and Myanmar, and Siam Makro will open up those markets, Mr Korsak said.

"For 7-Eleven, we only have a license for the Kingdom. We plan to expand from about 6,700 stores in the Kingdom to 10,000 within five to six years. However, Siam Makro will be our business arm in expanding cash-and-carry centers overseas," he said. – *The Nation*