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Children with Foreign Accounts: Unexpected Tax, Schedule B, Form 8938, and FBAR Issues, Journal of Taxation, Mar 2016

*INTERNATIONAL*

## **Children with Foreign Accounts: Unexpected Tax, Schedule B, Form 8938, and FBAR Issues**

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*Parents must have a clear understanding of resolution options if they learn that their children had inadvertent foreign account noncompliance with the IRS*

The goal of most parents is to make the lives of their children better than their own. Methods for reaching this lofty aspiration abound, but most entail establishing some degree of financial security for the children. Parents open different types of accounts for their children, such as those for covering college expenses, facilitating receipt of monetary gifts from relatives on birthdays and holidays, and creating a fund to be released to the children upon graduation, adulthood, marriage, or some other future contingency. Unfortunately, this type of laudable behavior can trigger U.S. tax problems for children when the financial accounts are located outside the United States. This article describes a typical scenario triggering unintentional violations, examines the thorny tax and information-reporting requirements for children and parents, and analyzes the options that children have for resolving problems with the IRS.

## SETTING THE SCENE

How does a child get into this pickle with the IRS? Well, the ways are endless, but here is a typical scenario.

Before coming to the United States or even contemplating the possibility of doing so, parents establish financial accounts in their home/foreign country in the name of their children. As indicated in the introduction of this article, these accounts are opened for any number of completely legitimate purposes. The objective of the parents might be to safeguard money for education expenses, establish a way for relatives and friends to make cash gifts to the children on special occasions, or amass funds to be distributed to the children when they graduate from college, get married, etc. Because the balances often start small, the accounts are opened for benevolent reasons, the children do not access the accounts, the parents have nothing to do with the United States at the outset, and many foreign countries do not tax minors and/or certain types of passive income, the parents put little thought to the accounts when they are living in their home/foreign country. This is fine.

The problem arises years later, when the family moves to the United States and all members, including the children, become "U.S. persons" for tax purposes by having a "substantial presence" in the United States, getting a Green Card, or obtaining U.S. citizenship. The parents have no tax-related skills, training, or experience when they arrive in the United States, particularly with the ultra-complex U.S. system. Therefore, they do the logical thing; they hire a U.S. accountant, provide all the data available, and file what they believe to be accurate and complete Forms 1040 each year.

For the reasons described above, it never occurs to the parents to mention to the U.S. accountant that the children have financial accounts in their home/foreign country, which, by that time, have grown significantly in size and generate material amounts of passive income each year. The possibility of the minor children having U.S. tax issues never dawns on the accountant either; therefore, he neglects to ask the parents any questions about the children, other than to confirm that they can be counted as dependents on the Form 1040 of the parents. The result is that no U.S. taxes are paid, and no U.S. international information returns are filed, with respect to the accounts, either by the parents or the children.

This oversight continues for years, until a bank from the home/foreign country sends a notice to the parents indicating that, as a result of the Foreign Account Tax Compliance Act (FATCA), the bank will be required to submit to the IRS data about the accounts of all family members, including those held by the children. The parents, who had attempted to maintain U.S. tax compliance, panic. They contact their U.S. accountant, express their concern, and ask about the children's obligations with respect to accounts in their home/foreign country.

The accountant shares the distress of the parents, particularly since he never inquired about assets held by the minor children based on his incorrect assumption that they were too young to have any. After

conducting some research, the accountant informs the parents that the minor children have inadvertently violated both U.S. tax and information-reporting duties, which are explained below.

## Overview of U.S. Requirements

Below is an overview of U.S. tax-related obligations for individuals with foreign accounts, beginning with the general rules and expanding into the special rules for minors

## Information-Reporting Obligations-Generally

A U.S. person, including a minor child, ordinarily has several duties each year if he holds a financial interest in a foreign account whose balance surpasses the relevant thresholds:

- (1) Report all income deposited into the account on Form 1040.
- (2) Report all passive income (e.g., interest, dividends, capital gains) generated by the account on Form 1040
- (3) Check the "yes" box in Part III (Foreign Accounts and Trusts) of Schedule B to Form 1040, disclosing both the existence and location of the foreign account
- (4) Enclose a Form 8938 (Statement of Specified Foreign Financial Assets) with Form 1040.
- (5) E-file a FinCEN Form 114 (FBAR). [1](#)

Failure to meet any of the preceding duties can lead to severe penalties for taxpayers. For instance, even in a relatively benign case, underreporting income triggers back taxes, accuracy-related penalties, and interest charges. [2](#) Moreover, if the taxpayer fails to file Form 8938 in a timely manner, the IRS can assert a penalty of \$10,000 per year. [3](#) Finally, neglecting to file an FBAR can spark huge sanctions. In the case of "non-willful" violations, the maximum penalty is \$10,000 per unreported account, per year. [4](#) The FBAR penalty increases significantly, though, when a taxpayer's inaction is deliberate; the IRS may assert a fine equal to \$100,000 or 50% of the balance in the account at the time of the violation, whichever amount is larger. [5](#)

It is important to note that failure to file a timely Form 8938 not only triggers a penalty, but also gives the IRS an unlimited period to audit the Form 1040 with which the Form 8938 should have been enclosed. Indeed, perhaps the most significant consequence of not reporting a foreign account on Form 8938 has nothing to do with money; it concerns time. A relatively obscure procedural provision, Section 6501(c)(8)(A), contains a powerful tool for the IRS. It generally states that when a taxpayer fails to file a timely Form 8938 (and/or a long list of other international information returns), the assessment period remains open "with respect to any tax return, event, or period" to which the Form 8938 relates until three years after the taxpayer ultimately files Form 8938. [6](#) Consequently, if a taxpayer never files a Form 8938, the three-year assessment period never begins to run against the IRS. This prevents taxpayers with Form 8938 violations from running out the clock, so to speak, on the IRS.

In the context of minor children, particularly those from foreign countries who still have relatives abroad, is it worthwhile mentioning another information-reporting requirement of which few are aware. Generally, if a U.S. person receives, as a gift or inheritance from an individual who is not a U.S. person, property (including money) totaling more than \$100,000 during a given year, the U.S. person must file a Form 3520 (Annual Return To Report Transactions With Foreign Trusts and Receipt of Certain Foreign Gifts) with the IRS providing data about the event. **7** The penalty for failing to file the Form 3520 is equal to 5% of the unreported gift or inheritance for each month the Form 3520 is late, with a maximum penalty of 25%. **8** The penalty might be waived, however, if the taxpayer can convince the IRS that there was reasonable cause for the violation. **9**

## **U.S. Income Tax Rules Concerning Passive Income of Minor Children**

Generally, tax dependents who have only investment/passive income, who are single, who are under 65 years old, who are not blind, and whose total income during the year is more than \$1,050 must file a Form 1040. **10** Here is a basic illustration provided by the IRS: "Sarah is 18 and single. Her parents can claim an exemption for her on their income tax return. She received \$1,970 of taxable interest and dividend income. She did not work during the year. She must file a tax return because she has unearned income only and her gross income is more than \$1,050." **11**

A parent generally can elect to include the investment income of a child on the parent's Form 1040 if *all* the following are true:

- (1) The child was under 19 at the end of the relevant year or the child was under 24 and a full-time student.
- (2) The child had only investment/passive income and no earned/wage income.
- (3) The child's gross income was less than \$10,500.
- (4) The child would be required to personally file a Form 1040 if the parent did not elect to include the child's income on the parent's Form 1040.
- (5) The child does not file a joint Form 1040.
- (6) The child did not make any estimated tax payments for the year.
- (7) No tax overpayment from a previous year (or from any Form 1040X) was applied to the year under the child's name.
- (8) No federal income taxes were withheld from the child's income under the backup-withholding rules.

Provided that all the preceding criteria are met, the parent can make the election to include the child's income by filing a Form 8814 (Parent's Election to Report Child's Interest and Dividends) with the parent's Form 1040. **12**

If the parent is ineligible or unwilling to elect to report the child's income on the parent's Form 1040 through inclusion of Form 8814, then the child must file a separate Form 1040 and enclose a Form 8615 (Tax for Certain Children Who Have Unearned Income) if *all* the following are true:

- (1) The child's investment/passive income was more than \$2,100 during the year.
- (2) The child is required to file a Form 1040.
- (3) At least one of the child's parents is alive at the end of the year.
- (4) The child does not file a joint Form 1040.
- (5) The child was (a) under 18 at the end of the year, (b) 18 at the end of the year and did not have earned income that constituted more than half of his support, or (c) between 19 and 23 at the end of the year, was a full-time student, and did not have earned income that was more than half of his support.

The effect of filing Form 8615 is that a portion of the child's income may be taxed at the parent's tax rate instead of the child's tax rate under the normal graduated system. [13](#)

This is by no means a treatise on all the complicated rules, forms, and procedures related to U.S. taxation of children and dependents. For purposes of this article, suffice it to say that all passive income generated by foreign accounts of U.S. children generally must be reported to the IRS and subjected to U.S. income taxes, either by a parent or the child.

## **Special U.S. Information-Reporting Rules for Foreign Accounts of Children**

As explained earlier in the article, a U.S. person, including a child, ordinarily has several information-reporting duties with respect to foreign accounts whose highest balance during the year eclipses the relevant limits. Among the many requirements are checking the "yes" box in Part III (Foreign Accounts and Trusts) of Schedule B to Form 1040 to disclose the existence and location of the foreign account, enclosing a Form 8938 with Form 1040, and e-filing an FBAR. The normal rules, definitions, and procedures associated with these duties are opaque, and things become downright thorny for taxpayers and their advisors when obscure twists are introduced for situations involving foreign accounts held by children. Aspects of these special rules, which have garnered surprisingly little attention in the tax community, are examined below.

**Form 8814 and Foreign Accounts of Children.** The IRS has clarified that, if a parent is claiming the income of foreign accounts held by a child by filing a Form 8814, such parent must be consistent when it comes to Schedule B on Form 1040. The IRS's instructions to Form 8814 include the following guidance on this point:

- "Foreign accounts and trusts. You must complete Schedule B (Form 1040), Part III, and file it with your tax return if your child: (1) Had a foreign financial account, or (2) Received a

distribution from, or was the grantor of, or transferor to, a foreign trust." **14**

- "Enter 'Form 8814' on the dotted line next to line 7a [At any time during 2015, did you have a financial interest in or signature authority over a financial account (such as a bank account, securities account, or brokerage account) located in a foreign country?] or line 8 [During 2015, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust?], whichever applies. Complete line 7b [If you are required to file FinCEN Form 114, enter the name of the foreign country where the financial account is located], if applicable." **15**

**Form 8938 and Foreign Accounts of Children.** The IRS follows the same rationale with respect to Form 8938. The regulations and the IRS's instructions to Form 8814 and Form 8938 explain the following in this regard:

- "Note. If you file Form 8814 with your income tax return to report your child's foreign financial account, you have an interest in the assets from that account and may be required to file Form 8938, Statement of Specified Foreign Financial Assets." **16**
- "Interests in assets generating certain unearned income of children. If you file Form 8814, Parents' Election To Report Child's Interest and Dividends, with your income tax return to elect to include in your gross income certain unearned income of your child (the "kiddie tax" election), you have an interest in any specified foreign financial asset held by the child." **17**
- "For purposes of Section 6038D and the regulations, a parent that makes an election under Section 1(g)(7) to include certain unearned income of a child in the parent's gross income required to be reported for the taxable year has an interest in any specified foreign financial asset held by the child." **18**
- "Special rule for parent making election under Section 1(g)(7). A parent who makes an election under Section 1(g)(7) to include certain unearned income of a child in the parent's gross income has an interest in any specified foreign financial asset held by the child for the purposes of section 6038D and the regulations." **19**
- "Married specified individuals filing a joint income tax return. If you are married and you and your spouse file a joint income tax return, report any specified foreign financial asset that you jointly own only once and include the maximum value of the entire asset (and not just the maximum value of your interest in the asset). Also, you must report any specified foreign financial asset that you or your spouse separately own and include the maximum value of the entire asset. If you and your spouse file a joint income tax return that includes Form 8814, you must report any specified foreign financial asset your child owns only once and include the maximum value of the entire asset." **20**
- "Married specified individuals filing separate income tax returns. If you are married and you and your spouse are specified individuals who file separate income tax returns, both you and your spouse report any specified foreign financial asset that you jointly own on your separate Forms 8938, and both you and your spouse must include the maximum value of the entire asset on your separate Forms 8938. You also must report any specified foreign financial asset

that you own individually on your separate Form 8938 and include the maximum value of the entire asset. If you file Form 8814, you must report any specified foreign financial asset your child owns and include the maximum value of the entire asset." [21](#)

**FBAR and Foreign Accounts of Children.** Starting in 2014, the government took a different approach when it comes to the FBAR. There were ample opportunities for the government to raise this issue earlier, invite public comment, explain the reasoning behind its position, etc. For example, the Treasury Department issued proposed FBAR regulations in February 2010 and then released final FBAR regulations a year later, in February 2011. [22](#) The proposed definition of "U.S. person" did not mention children, and the final regulations (consisting of a background section, a lengthy discussion of the public comments, a detailed provision-by-provision analysis, and the text of the final regulations) were silent on the matter of children, too. Then, more than three years later, in June 2014, the stringent FBAR rules for children appeared in the online instructions for the FBAR.

The FBAR instructions broadly state that a U.S. child is not excused from his FBAR filing duty, regardless of age or capacity. Thus, unlike with Form 1040 (when parents can report on Form 8814 the income for the children and report on Schedule B the existence and location of the foreign accounts held by the children) and unlike with Form 8938 (when parents can report the existence and other details about the foreign accounts held by the children), the child must personally handle his FBAR duties. The current instructions to the FBAR state the following in this regard:

- For purposes of the FBAR, the term "person" means "an individual (including a minor child) and legal entities . . . ." [23](#)
- The term "U.S. person" means "United States citizens (including minor children); United States residents; entities, including, but not limited to, corporations, partnerships, or limited liability companies created or organized in the United States or under the laws of the United States; and trusts or estates formed under the laws of the United States." [24](#)
- "Responsibility for Child's FBAR: Generally, a child is responsible for his or her own FBAR report. If a child cannot file his or her own FBAR for any reason, such as age, the child's parent, guardian, or other legally responsible person must file it for the child." [25](#)
- "Responsibility for Child's FBAR. Signing the child's FBAR: If the child cannot sign his or her FBAR, a parent or guardian must electronically sign the child's FBAR. In Item 45 Filer Title, enter 'Parent/Guardian filing for child.'" [26](#)

The legal legitimacy of obligating minor children to file FBARs has not been challenged in a meaningful manner yet, which is not surprising given that the government did not publish the rule until June 2014. Research identified just one case in which this issue has been addressed, a case filed in July 2015 seeking various things from the court, including a ruling that the FBAR filing requirements are unconstitutional and an injunction prohibiting the IRS from enforcing them. As a basis for the claims, one of the taxpayers explained that (1) he was a former U.S. citizen who renounced his citizenship in 2012 because of difficulties caused by FATCA, (2) his wife has never been a U.S. person, (3) their 10-year-old daughter is a U.S. citizen, (4) the family currently lives in Switzerland, (5) having a foreign account in the

name of the daughter would offer advantages such as better interest rates and discounts with local businesses, (6) the taxpayer currently maintains a college savings plan in Switzerland for his daughter, (7) the taxpayer refrains from transferring the account to his daughter for fear of potentially high FBAR penalties, (8) the taxpayer is aware of the rule that either the daughter or the parents would need to file an FBAR for the daughter if the account were transferred to her, (9) a 10-year-old is incapable of filing an FBAR, and (10) neither the taxpayer nor the wife is willing to file an FBAR for the daughter because they are not U.S. persons and do not have personal filing requirements with the IRS. <sup>27</sup> The court never addressed the substantive issue in the case because the taxpayer lacked legal standing; the FBAR reporting obligations would apply to the daughter, not the taxpayer, and she was not one of the plaintiffs. <sup>28</sup>

## **OPTIONS FOR RESOLVING NONCOMPLIANCE BY CHILDREN.**

This article began with an example of how children of an immigrant family could find themselves unwittingly in a mess with the IRS, facing potentially large penalties for unreported foreign accounts. Unfortunately, resolving matters is not easy for these children.

### **Description of Five Options Acceptable to IRS**

As of the writing of this article, there are five main options, which are acceptable to the IRS, for resolving noncompliance in past years. <sup>29</sup> These consist of (1) participating in the 2014 Streamline Foreign Offshore Procedure (SFOP), (2) participating in the 2014 Streamline Domestic Offshore Procedure (SDOP), (3) participating in the 2014 Offshore Voluntary Disclosure Program (OVDP), (4) filing late FBARs on a penalty-free basis pursuant to Delinquent FBAR Submission Procedure (DFSP), which is limited to taxpayers who previously reported all income and paid all taxes related to foreign accounts but inadvertently failed to file FBARs, or (5) filing late information returns (other than FBARs) on a penalty-free basis according to the Delinquent International Information Return Submission Procedures (DIIRSP), which is open only to taxpayers who reported all income and paid all taxes related to foreign entities and assets but neglected to file information returns, such as Forms 5471 (for foreign corporations), Forms 8865 (for foreign partnerships), Forms 8938 (for foreign financial assets), Forms 3520 (for foreign trusts), etc.

Dozens of articles have been written about the intricacies of the preceding five options, and there is no need to get into that level of detail here. It is enough to underscore the order in which taxpayers likely would choose to resolve their matters, if they were to meet the relevant eligibility criteria. Most taxpayers would prefer to settle things through the SFOP, DFSP, or DIIRSP because each of these options calls for penalty-free treatment, and the latter two, by definition, do not involve payment of any U.S. tax liabilities.

If these top three choices are unfeasible, taxpayers logically would attempt to conclude matters through

the SDOP because participants are required to file Forms 1040X (Amended U.S. Income Tax Returns) for only the past three years, the IRS does not assert penalties on the additional tax liabilities shown on the Forms 1040X, and the one-time "offshore" penalty imposed by the IRS to broadly sanction all past international tax violations is set at just 5% of the highest aggregate value of the noncompliant foreign assets during the SDOP period.

The OVDP occupies the lowest rung on the ladder for most taxpayers because it requires the filing of Forms 1040 or Forms 1040X for eight years (as opposed to three years), the IRS obligates the taxpayer to pay taxes, penalties, and interest with respect to the Forms 1040 or Forms 1040X (instead of just taxes and interest), and the "offshore" penalty is either 27.5% or 50% of the highest aggregate value of the noncompliant foreign assets (instead of 5%).

## Application of the Options to the Children in Our Example

Below is an examination of the limited options available to children with unreported foreign accounts to proactively settle matters with the IRS

**Inapplicability of DFSP.** The guidance from the IRS website states that the DFSP is available only to taxpayers who do not need to use the OVDP, SDOP, or SFOP "to file delinquent or amended tax returns to report and pay additional tax." <sup>30</sup> It goes on to clarify that, if the taxpayer owes the IRS back taxes because of unreported income from unreported foreign accounts, the taxpayer cannot rectify matters through the DFSP. The website indicates the following in this regard: "The IRS will not impose a penalty for the failure to file the delinquent FBARs if you properly reported on your U.S. tax returns, and paid all tax on, the income from the foreign financial accounts reported on the delinquent FBARs, and you have not previously been contacted regarding an income tax examination or a request for delinquent returns for the years for which the delinquent FBARs are submitted." <sup>31</sup>

The children from the example at the beginning of this article would not be eligible for the DFSP because neither they nor their parents (by including the income on Form 8814) timely reported income from the foreign accounts on Form 1040s.

**Inapplicability of DIIRSP.** If the children in the example had only a Form 8938 violation (and no FBAR violation), they might have been able to resolve matters with the IRS on a penalty-free basis through the DIIRSP, notwithstanding the fact that they failed to report passive income. This is because the IRS issued a set of special rules, in the form of Frequently Asked Questions (FAQs), related to the DIIRSP. FAQ #1 indicates that the DIIRSP will allow taxpayers with income tax problems to still use the DIIRSP, provided that the taxpayers can convince the IRS that there was "reasonable cause" for the violations. FAQ #1 states the following:

[The previous exception] was only available to taxpayers who were fully tax compliant.

The [new] Delinquent International Information Return Submission Procedures clarify how

taxpayers may file delinquent international information returns in cases where there was reasonable cause for the delinquency. *Taxpayers who have unreported income or unpaid tax are not precluded from filing delinquent international information returns.* Unlike the procedures described in [the previous exception], penalties may be imposed under the Delinquent International Information Return Submission Procedures if the [IRS] does not accept the explanation of reasonable cause. [32](#)

Regrettably for the children in our example, FAQ #1 applies only to the DIIRSP, not the DFSP, and foreign financial accounts that reach certain levels generally must be reported on both Form 8938 (to which the DIIRSP applies) and the FBAR (to which the DFSP applies).

**Inapplicability of SFOP.** Because the children in the example have been residing in the United States with their family on a full-time basis for several years, they would not qualify for the SFOP either. This is because eligibility for the SFOP demands that the children have lived outside the United States for at least 330 days during one or more of the past three years and did not maintain an abode in the United States during the relevant year or years. [33](#)

**Inapplicability of SDOP.** Among the criteria for the SDOP is that the taxpayer filed timely (yet inaccurate or incomplete) Forms 1040 with the IRS each year; the SDOP is not open to so-called "serial non-filers." The IRS website explains that taxpayers must have "previously filed a U.S. tax return (if required) for each of the most recent 3 years for which the U.S. tax return due date (or properly applied for extended due date) has passed." [34](#) The website confirms this eligibility criteria by stating that "[y]ou may not file delinquent income tax returns (including Form 1040, U.S. Individual Income Tax Return) using these procedures." [35](#)

The SDOP training materials for IRS personnel are also emphatic on this point. A recent "Job Aid" states that taxpayers seeking to enter the SDOP must, among other things, "have previously filed a U.S. tax return for each of the most recent 3 years for which the U.S. tax return was due." [36](#) It goes on to underscore the fact that "[d]elinquent domestic taxpayers will not be eligible for streamlined [and] this is not a non-filer program." [37](#)

The foreign accounts held by the children in our example were generating substantial passive income each year, the children did not file annual Forms 1040, and their parents did not relieve the children of this duty by enclosing Forms 8814 with their Forms 1040. Accordingly, the children would be unable to resolve matters through the SDOP.

**Applicability of OVDP.** This leaves the most unappealing of the options, the OVDP. As explained above, the OVDP is often the last resort for taxpayers because it requires taxpayers to (1) gather foreign tax-related data for the past eight years, which can be time-consuming, costly, and frustrating, (2) pay accountants to prepare all the required U.S. tax and information returns for the past eight years, (3) hire a tax professional to prepare and submit to the IRS a series of mandatory letters, forms, and packets, and then handle the follow-up interactions with the IRS, (4) pay taxes, penalties, and interest charges

related to Forms 1040 or Forms 1040X for the past eight years, (5) depending on the types of banks at which the unreported foreign accounts were held, pay an "offshore" penalty in the amount of either 27.5% or 50% of the highest aggregate balance of the noncompliant foreign assets during the relevant eight-year period, and (6) endure a long, slow OVDP process filled with anxiety.

The OVDP features some clemency for children who become tangled in noncompliance, but it applies only to situations in which the parents have a foreign account in their personal names and they simply add the children as signatories. This is often done in the case of elderly and/or sick parents, who want to grant financial access to their children before they die or become incapacitated. In FAQ #39, the IRS directs taxpayers in this situation to resolve things in the following manner: The children should file delinquent FBARs on a penalty-free basis under the DFSP (because they have no financial interest in the account and thus no unreported income from the account), and the parents should include the value of the foreign account when calculating their "offshore" penalty under the OVDP. **38** The IRS has not demonstrated any mercy within the OVDP in situations where a parent opens a foreign account in the name of a child, notwithstanding the fact that in both cases the child may have no knowledge whatsoever of the account.

To the extent that a taxpayer (including a minor child) wants to dispute the large "offshore" penalty, the taxpayer must essentially wait until the end of the process and then formally "opt-out" of the OVDP. The taxpayer must persuade multiple layers of IRS personnel that the international violations were not only unintentional, but also reasonable, in order to obtain reduced penalties. This challenging task involves the taxpayer preparing a detailed written statement for the IRS, providing supporting documentation (such as an affidavit from an accountant, attorney, or other qualified tax advisor if the taxpayer is claiming reasonable reliance on erroneous tax advice), and then submitting to a personal interview with a Revenue Agent. The IRS sets taxpayer expectations regarding the likelihood of penalty reduction, stating the following in its official OVDP guidance: "We anticipate that opting out will be appropriate for a discrete minority of cases." **39**

## **CONCLUSION**

This article underscores three important issues of which many taxpayers and their advisors are unaware.

First, children with foreign financial accounts generally have U.S. tax and information-reporting duties like all U.S. persons. If parents are unable or unwilling to claim the income from a child's accounts on their own Form 1040 by enclosing a Form 8814, if the passive income of the child exceeds the threshold, and if the highest balance of the foreign accounts exceeds the applicable limits, then the child will be required to (1) file a Form 1040 reporting all worldwide income, (2) check the "yes" box in response to the foreign-account question on Schedule B to Form 1040 and identify the country in which the accounts are located, (3) enclose a Form 8938 with Form 1040, and (4) e-file a timely FBAR.

Second, if parents claim the income from a child's foreign accounts on their Form 1040 by enclosing a

Form 8814, the obligations do not end there. The parents must insert special language in responding to the foreign-account question on Schedule B to Form 1040, and they must include the child's foreign account on their Form 8938. Additionally, parents must be cognizant of the fact that the child must e-file his own FBAR, reporting the foreign accounts, because the tax-related actions taken by the parents do not liberate the child of his own FBAR duty.

Finally, if parents discover that their children had inadvertent foreign account noncompliance with the IRS, they need to have a clear understanding of the resolution options available and unavailable to the children, such that they do not take actions now, out of ignorance or panic, that would serve to convert unintentional errors in the past into items that the IRS would attempt to characterize (for criminal or civil tax penalty purposes) as current acts of intentional concealment.

**1** The taxpayer generally would also be required to enclose a Form 8621 (Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund) with Form 1040, if the foreign account contains foreign mutual funds.

**2** Section 6662.

**3** Section 6038D(d)(1); **Reg. 1.6038D-8(a)** .

**4** 31 U.S.C. section 5321(a)(5)(B)(i)31 U.S.C. section 5321(a)(5)(B)(i) (as in effect after 10/22/04).

**5** 31 U.S.C. sections 5321(a)(5)(C)(i)31 U.S.C. sections 5321(a)(5)(C)(i), (D)(ii) (as in effect after 10/22/04).

**6** Section 6501(c)(8)(B) contains a limitation, stating that the assessment period will remain open only with respect to "the item or items" related to the late Form 8938 if the taxpayer can demonstrate that the violation was due to reasonable cause and not due to willful neglect.

**7** Section 6039F(a).

**8** Section 6039F(c)(1)(B).

**9** Section 6039F(c)(2).

**10** Sections 6011(a) and 1(g); **Temp. Reg. 1.1(i)-1T** ; **TD 8158** , 9/4/87; IRS Publication 929 (Tax Rules for Children and Dependents) (2015).

**11** IRS Publication 929 (Tax Rules for Children and Dependents) (2015), p. 3.

**12** IRS Publication 929 (Tax Rules for Children and Dependents) (2015), pgs. 9-10; Instructions to Form 8814 (Parents' Election to Report Child's Interest and Dividends) (2015), pg. 3.

**13** IRS Publication 929 (Tax Rules for Children and Dependents) (2015), pgs. 12-13; Instructions to Form 8615 (Tax for Certain Children Who Have Unearned Income) (2015), pg. 1.

**14** Instructions to Form 8814 (Parents' Election to Report Child's Interest and Dividends) (2015), pg. 3.

**15** *Id.*

**16** *Id.*

**17** Instructions to Form 8938 (Statement of Specified Foreign Financial Assets) (2015), p. 5.

**18** **TD 9567** , 12/19/11; See also **TD 9706** , 12/12/14.

**19** **Reg. 1.6038D-2(b)(3)** .

**20** Instructions to Form 8938 (Statement of Specified Foreign Financial Assets) (2015), p. 6.

**21** Instructions to Form 8938 (Statement of Specified Foreign Financial Assets) (2015), p. 6.

**22** 75 Fed. Reg. 8844 (2010); 76 Fed. Reg. 10234 (2011).

**23** BSA Electronic Filing Requirements for Report of Foreign Bank and Financial Accounts (FinCEN Form 114) (June 2014) (v1.3), pg. 5.

**24** BSA Electronic Filing Requirements for Report of Foreign Bank and Financial Accounts (FinCEN Form 114) (June 2014) (v1.3), pgs. 5-6.

**25** BSA Electronic Filing Requirements for Report of Foreign Bank and Financial Accounts (FinCEN Form 114) (June 2014) (v1.3), pg. 6. This language was added by the government in June 2014.

**26** BSA Electronic Filing Requirements for Report of Foreign Bank and Financial Accounts (FinCEN

Form 114) (June 2014) (v1.3), pg. 6. This language was added by the government in June 2014.

**27** *Crawford*, Case 3:15-cv-00250, (DC Ohio, 7/14/15), pp. 19-20.

**28** *Crawford*, **116 AFTR 2d. 2015-6288** , (DC Ohio, 2015), at \*8 and \*9.

**29** Please note that this article discusses only the five main methods that the IRS has publicly approved. Taxpayers use other techniques, such as making a so-called "quiet disclosure" with the IRS, doing nothing, beginning U.S. tax compliance in future years only, etc. These and other techniques are not addressed in this article and they are not endorsed by the author.

**30** See [www.irs.gov/Individuals/International-Taxpayers/Delinquent-FBAR-Submission-Procedures](http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-FBAR-Submission-Procedures).

**31** *Id.*

**32** See

[www.irs.gov/Individuals/International-Taxpayers/Delinquent-International-Information-Return-Submission-Procedures-F](http://www.irs.gov/Individuals/International-Taxpayers/Delinquent-International-Information-Return-Submission-Procedures-F)

**33** See

[www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States](http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-Outside-the-United-States).

**34** See

[www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States](http://www.irs.gov/Individuals/International-Taxpayers/U-S-Taxpayers-Residing-in-the-United-States).

**35** *Id.*

**36** "Job Aid on Offshore Voluntary Disclosure Program Available-2014 OVDP Training," Tax Analysts Doc. 2015-21933 (10/5/15).

**37** *Id.*

**38** FAQ #39 at

[www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-a](http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-a)

**39** See FAQ #51 at

[www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-a](http://www.irs.gov/Individuals/International-Taxpayers/Offshore-Voluntary-Disclosure-Program-Frequently-Asked-Questions-a)

