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Newsletter October 2023

2023 Due Dates

October 16 - Individuals

If you requested an automatic 6-month extension to file your income tax return for 2022, file Form 1040 and pay any tax, interest, and penalties due.

Foreign Account Reporting

All United States entities (including citizens and resident aliens as well as corporations, partnerships, and trusts) with financial interests in or authority over one or more foreign financial accounts (e.g., bank accounts and securities) need to report these relationships to the U.S. Treasury if the aggregate value of those accounts exceeds $10,000 at any time during the year. Failure to file the required forms can result in severe penalties.

The U.S. government wants this information for a couple of pretty obvious reasons. One, foreign financial institutions may not have the same reporting requirements as U.S.-based financial institutions. For example, they may not issue the 1099 forms to report interest, dividends and sales of stock. By requiring those in the U.S. to divulge their foreign account holdings, the IRS can more easily cross-check to see if foreign income is being reported on the individual's tax return. The second (and probably more significant) reason is that the information in the report can be used to identify or trace funds used for illegal purposes or to identify unreported income maintained or generated overseas.

Due Date and Extension – For 2022, the due date for filing this report was April 18, 2023, but the government grants an automatic extension to October 16, 2023 for those who didn't file by April 18. This filing, the Report of Foreign Bank and Financial Accounts (FBAR), is not made with the IRS; rather, it involves completing Bank Secrecy Act forms and filing them electronically through the U.S. Treasury's **Financial Crimes Enforcement Network.**

Failure to Report Penalties – The government has been very aggressive about levying penalties against those who failed to file a FBAR when required, and even took the position that the penalties applied per each unreported foreign account and not the annual FBAR reporting on FinCEN Form 114. Lucky for taxpayers, after a disagreement in two different tax courts, the issue ended up at the U.S. Supreme Court where the justices ruled the penalties only applied to the FBAR reporting and not per individual account.

A civil penalty of up to $10,000 may be imposed for a non-willful failure to report; the penalty for a willful violation is the greater of $100,000 or 50% of the account's balance at the time of the violation. Both the $10,000 and $100,000 amounts are subject to inflation adjustment. For penalties assessed after January 19, 2023, the amounts are $15,611 and $156,107, respectively. A willful violation is also subject to criminal prosecution, which can result in a fine of up to $250,000 and jail time of up to five years.

CAUTION: On Schedule B of the Form 1040 tax return, you must state whether you have a financial interest in or signature authority over one or more foreign financial accounts. If you answer yes but don't file the FBAR, your failure to file may be considered willful, which could subject you to the larger fine and jail time.

Financial Account – The term "financial account" includes securities; brokerage, savings, checking, deposit and time deposit accounts; commodity futures and options; mutual funds and even nonmonetary assets (e.g., gold). Such an account is classified as "foreign" if the financial institution that holds it is located in a foreign country. Shares of a foreign stock or of a mutual fund that invests in foreign stocks are not considered foreign if they are held in an account at a U.S. financial institution or brokerage, so they do not need to be reported under the FBAR rules. In addition, an account maintained at a branch of a foreign bank is not considered a foreign financial account if the branch is physically located in the U.S.

Unforeseen Foreign Accounts – You may have an FBAR requirement and not even realize it. For instance, say that you have relatives in a foreign country who have put your name on their bank account in case of an emergency; if the value of that account exceeds $10,000 at any time during the year, you will need to file the FBAR. The same would be true if your name was added to several of your foreign relatives' smaller-value accounts that add up to more than $10,000 at any time during the year. As another example, if you gamble at an online casino that is located in a foreign country and your account exceeds the $10,000 limit at any time during the year, you will need to file the FBAR.

Additional Filing Requirements – You may also have to file IRS Form 8938, which is similar to the FBAR but applies to a wider range of foreign assets and has a higher dollar threshold. Unlike the FBAR that is filed separately, Form 8938 is filed with your income tax return. If you are married and filing jointly, you must file Form 8938 if the value of your foreign financial assets exceeds $100,000 at the end of the year or $150,000 at any time during the year. If you live abroad, these thresholds are $400,000 and $600,000, respectively. For other filing statuses, the thresholds are half of the amounts above. The penalty for failing to file Form 8938 is $10,000 per year; if the failure continues for more than 90 days after the IRS provides notice of your failure to file, the penalty can be as high $50,000.

As you can see, failure to comply with the foreign-account and/or foreign-asset reporting requirements can lead to very severe repercussions. Please call this office if you have questions or need assistance meeting your foreign account reporting obligations.

The Future of U.S. Tax Policy: Key Issues For 2024 Presidential Candidates

The early Presidential debates for the 2024 election cycle have begun, and one topic that's expected to take center stage is the future of the U.S. tax code. Tax policy questions loom large, and the 46th person to serve as United States President – remember, Grover Cleveland was elected twice, non-consecutively – will have to grapple with some major tax issues.

Foremost among these are the expiring individual and business tax regulations brought about by the Tax Cuts and Jobs Act (TCJA) and the growing deficits and national debt.

Tax Cuts and Jobs Act Details

The tax code changes brought about the TCJA are scheduled to sunset at the end of 2025, leading to potentially major changes for taxpayers. **Kiplinger** notes that now is the time to begin planning to mitigate the financial impact of these expiring provisions – talk to your tax professional for planning strategies that might help you keep more of your hard-earned money.

It is also imperative for all of the 2024 Presidential candidates to address how they intend to prevent these expirations from negatively affecting Americans in all demographics and at all income levels. TCJA questions surrounding all of the following topics are likely to play a key role in debates moving forward.

Individual Tax Expirations
The TCJA, which was signed into law in December 2017, introduced temporary changes that significantly alter the taxes paid by individual income earners. This means that the majority of Americans have enjoyed increased after-tax income for the last several years. Some notable provisions that are set to expire include:

Lower Tax Rates and Brackets

Before the TCJA changes took effect, the U.S. tax code had seven brackets with rates from 10 percent to 39.6 percent. The TCJA lowered rates for several brackets and widened the brackets to reduce so-called marriage penalties. Furthermore, the TCJA lowered the top tax bracket from 39.6 percent to 37 percent, which has saved high-earners significant amounts of money.

Expanded Family Benefits

The TCJA reformed the Child Tax Credit (CTC), personal and dependent exemptions, and the standard deduction. This gave lower- and middle-income households with children greater benefits. It also simplified the tax filing process. As an example, it doubled the maximum CTC to $2,000 per eligible child and extended overall eligibility to more families.

It is important to note that the aforementioned **Child Tax Credit** changes took effect before the COVID-19 pandemic, which resulted in additional legislation to temporarily expand the credit even further.

Itemized Deduction Limits

To offset tax cuts, the TCJA imposed limits on itemized deductions for home mortgage interest and state and local taxes, and doubled the standard deduction which eliminated the need for millions of taxpayers to itemize their deductions at all. The legislation also temporarily eliminated select miscellaneous itemized deductions.

These changes are set to revert after 2025.

Business Tax Expirations

Small business owners and corporations also face tax uncertainty due to scheduled changes to American tax policy. Throughout the debate season, 2024 Presidential hopefuls will need to address a number of key business tax issues, including these:

Research and Development

Companies can no longer immediately deduct research and development (R&D) expenses, which may discourage R&D investment. Instead, companies must now amortize their costs over a five-year period.

It is worth noting that there has been a bipartisan Congressional effort to introduce new R&D tax credits. In March 2023, for instance, Senators Maggie Hassan (D-NH) and Todd Young (R-IN) reintroduced the **American Innovation and Jobs Act**. This aimed to extend and expand the R&D tax credit to allow more startups and small businesses to take advantage of the popular tax credit.

Machinery and Equipment

The TCJA temporarily allowed business owners and corporations to immediately deduct the costs associated with short-lived assets like machinery and equipment. However, this provision, called bonus depreciation, is phasing out with other TCJA changes, possibly discouraging investments in these types of goods.

What Happens Next?

The next President will have the opportunity to help reshape crucial sections of the tax code, impacting American families' finances and business decisions.

The tax questions at the forefront of this election season have the potential to shape the U.S. tax code for years – or even decades – to come. We suggest staying aware of proposed changes as they start to be discussed in this election cycle.

Thank you for selecting our firm for your tax and accounting needs. We appreciate the confidence you have shown in us, and we remain ready to assist you at any time.

Scott Jensen
Kramer & Jensen, LLC

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