

# UK-Based Retirement Accounts for U.S. Taxpayers: Mastering Reporting, Maximizing Planning Opportunities

TUESDAY, FEBRUARY 6, 2018, 1:00-2:50 pm Eastern

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# UK-Based Retirement Accounts for U.S. Taxpayers

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# Outline

- Overview of the different UK registered pension plans
- US income tax consequences of those plans
- How to disclose these plans

# Types of Registered Plans - Created by Individual

Type of Plan	Individual Contributions	Employer Contributions	Retirement Benefit Scheme*	Held by Trustee
• <b>Personal Pension Plan (PPP)</b>	Yes	Yes	Yes	Yes
• <b>Self Invested Pension Plan (SIPP)</b>	Yes	Yes	Yes	Yes
• <b>Additional Voluntary Contribution (AVC)</b>	Yes	No	Yes	Yes
• <b>Retirement Annuity (RAR)</b>	Yes	No	Yes	Yes
• <b>Stake Holder (Now moved into work place pensions)</b>	Yes	Yes	Yes	Yes
• <b>Work Place Pensions (WPP)</b>	Yes	Yes	Yes	Yes

\*Chapter I of Part XIV of the Income and Corporation Taxes Act 1988

# Types of Registered Plans - Created by Corporate

Type of Plan	Individual Contributions	Employer Contributions	Retirement Benefit Scheme*	Held by Trustee
• <b>Small Self Administered Scheme (SSAS)</b>	Yes	Yes	Yes	Yes
• <b>Executive Pension Plan (EPP)</b>	Yes	Yes	Yes	Yes
• <b>Stake Holder (Now moved into work place pensions)</b>	Yes	Yes	Yes	Yes
• <b>Work Place Pensions (WPP)</b>	Yes	Yes	Yes	Yes
• <b>Funded Unapproved Retirement Benefit Scheme (FURB) - Now known as Employer Financed Retirement Benefit Scheme (EFRBS)</b>	No	Yes	No	Yes
• <b>Employer Funded Unapproved Retirement Benefit Scheme (EFURBS)</b>	No	Yes	No	Yes

\*Chapter I of Part XIV of the Income and Corporation Taxes Act 1988

# Individual Plans - Investment Opportunities/Restrictions

Type of Plan	Investment Funds	Direct Stock investments	Commercial Property
• <b>Personal Pension Plan (PPP)</b>	Yes	No	No
• <b>Self Invested Pension Plan (SIPP)</b>	Yes	Yes	Yes
• <b>Additional Voluntary Contribution (AVC)</b>	Yes	No	No
• <b>Retirement Annuity (RAR)</b>	Yes	No	No
• <b>Stake Holder (Now moved into work place pensions)</b>	Yes	No	No
• <b>Work Place Pensions (WPP)</b>	Yes	No	No



# Corporate Plans - Investment Opportunities/Restrictions

Type of Plan	Investment Funds	Direct Stock investments	Commercial Property	Loan Backs
• <b>Small Self Administered Scheme (SSAS)</b>	Yes	Yes	Yes	Yes
• <b>Executive Pension Plan (EPP)</b>	Yes	Yes	No	No
• <b>Stake Holder (Now moved into work place pensions)</b>	Yes	No	No	No
• <b>Work Place Pensions (WPP)</b>	Yes	No	No	No
• <b>Funded Unapproved Retirement Benefit Scheme (FURB) - Now known as Employer Financed Retirement Benefit Scheme (EFRBS)</b>	Yes	Yes	Yes	No
• <b>Employer Funded Unapproved Retirement Benefit Scheme (EFURBS)</b>	Yes	Yes	Yes	No

# Brief History of UK Pensions Plans

## **Huge shake up of whole pension system with effect from 5 April 2006**

- Change in the amount of contributions allowable for a tax year.
- No carry forward or backward of either relief or contributions.
- Annual contribution limit £215,000 introduced
- Lifetime valuation limit £1.5m introduced, subject to protection for old schemes
- Able to transfer pension pot to another provider prior to taking benefits (Open Market Option)
- When taking benefits 25% of pension pot tax free, the balance used to produce an income
- No longer necessary to purchase annuity; investments can generate income from which pension is paid within limits
- Pension Pot able to be left to heirs subject to tax of 82%

# Brief History of UK Pensions Plans

## **Another major shake up with effect from 6 April 2016**

- Lifetime allowance limit now reduced to £1m
- Annual Contributions limited to £40k or £10k if total income exceeds £150k or currently in pension draw down
- Carry forward of unused relief for a max three years
- Tax due on pension pot on death reduced from 82% to 55% consideration being given to reducing tax on pension pot further.
- Able to pay pension or pot to relatives at their marginal tax rates.

# Pensions in Payment

- UK Tax free element normally 25%, may be higher for very old policies
- Balance of 75% is used to provide an income in one of a number of different ways:
  - Buy an annuity
  - Draw Down:- amount of pension income is governed by a percentage of the pension pot determined by the GAD (Government Actuarial Department). Any pension payment is taxable income
  - Flexible Draw Down:- you can take any amount out of your pension pot at any frequency until extinguished. UK tax treatment:
    - If the tax free lump sum as above has been taken then the pension payment is taxable in full at your marginal rate
    - If the tax free lump sum hasn't been taken, then the first 25% is tax free and the balance of 75% is taxed as income at the taxpayer's marginal tax rate when withdrawn

# US Individuals Working and Living in the UK

## Earnings from Non UK Employer

- Contributions to a recognised USA pension scheme as defined in the Exchange of Notes of 24 July 2001 under Article 3.1 (o) are a tax allowable deduction when calculating UK tax liabilities of the individual.

## Earnings from a UK Employer

- Only contributions to a UK recognised pension scheme as listed above will be UK tax allowable either to the individual or the employer depending on whom is making the contributions.
- You should note that most employers in the UK now have to “Auto enrol” you into their “Work Place Pension Scheme” within three months of starting employment.
- NB. you can elect to opt out of “Auto enrolment” if you wish but you will be automatically re-enrolled every three years and you need to opt out again each time.

# UK Individuals Emigrating to the US

Where a UK individual decides to move to the US either for work or on retirement one needs to consider both the UK and US tax consequences of such a move.

## **From the UK perspective:**

- UK Pensions in payment are subject to deduction of tax at source under Pay As You Earn (PAYE)
- The UK/USA Double Tax Treaty allows a claim to be made such that UK tax is not deductible at source whilst it is taxable in the US
- Assuming that the emigration is for more than five years, the pension scheme can be transferred to an overseas jurisdiction to either:
  - a QROP (Qualifying Recognised Overseas Pension Scheme) or
  - a QNUP (Qualifying Non-UK Pension Scheme)
- without incurring any UK exit charges.

# UK Individuals Emigrating to the US

## From the U.S perspective:

- **Tax deductible contributions to U.K. pensions are limited to the amount that would be allowed under U.S. law subject to the following limits:**
  - The employee must have contributed to the plan before moving to the U.S
  - The competent authority of the other country has agreed that the plan generally corresponds to a pension plan recognized for tax purposes by that country.
- **This favorable treatment only applies to UK nationals who are not permanent US residents**

# UK Individuals Emigrating to the US

## From the U.S perspective:

- **Pension distributions are taxable in the country of residence, i.e., the US**
- **Roll-overs to other UK pension plans are not treated as distributions**
- **Tax-free portions of a UK pension retain their tax free status in the US**
- **Social security benefits are also taxable only in the country of residence**
  - **This is different from the US Model Treaty approach, which allows source country taxation**



# U.S. Taxation and Reporting Requirements of U.K. Retirement Plans

# Outline

- General U.S. taxation guidelines under Section 402(b) and other provisions
- U.S. tax treatment of the U.K. plans discussed above
- U.S. reporting requirements for these plans

# GENERAL U.S. TAXATION CONCEPTS

# Employees' Trust IRC §401(a)

- An qualifying employees' trust is a trust created or organized in the United States and forming part of a stock bonus, pension, or profit-sharing plan of an employer for the exclusive benefit of his employees or their beneficiaries
- Employees' trusts meeting these requirements qualify for tax exemption under IRC §501(a)

# IRC §402(b)(1)

- Applies to funded employees' trusts not qualifying for exemption under IRC §501(a)
- Employer contributions to such trusts are includible in income under IRC §83
  - Occurs when property is not subject to a substantial risk of forfeiture
  - Generally occurs when property vests
- If employee vests in plan during a taxable year, the value of the employee's interest in the plan is taxable in full at such time

# IRC §402(b)(2)

- Distributions (and vestings) are taxable under Section 72
- Taxation depends on the “investment in the contract”
  - Employer contributions are considered “investment in the contract” only if:
    - The amounts were includible in the employee’s income, or
    - If such amounts had been paid directly to the employee at the time they were contributed, they would not have been includible in the gross income of the employee under the law applicable at the time of such contribution

# IRC §402(b)(2) (continued)

- However, IRC §72(w) provides that employee or employer contributions are not included in a plan participant's basis if:
  - The employee was a nonresident alien at the time the services were performed with respect to which the contribution was made;
  - The contribution is with respect to compensation for labor or personal services from non-U.S. sources; and
  - The contribution was not subject to income tax under the laws of the United States or any foreign country.

# IRC §402(b)(3)

- A beneficiary of an employees' trust under IRC §402(b) will generally not be considered as an owner of the trust under the grantor trust rules
- However, the beneficiary is treated as an owner of a portion of the trust for purposes of the grantor trust rules if the employee's contributions exceed those of the employer.
- Retirement plans not constituting employees' trusts are taxed under general tax principles depending on their nature



# IRC §402(b)(4)

- If the plan is “discriminatory” (also referred to as being not “broad-based”), any increase in value in a highly compensated employee’s (HCE’s) vested portion (i.e., earnings and accretions) during the year will also be taxable.
- An employee generally is considered highly compensated if he or she was a 5-percent owner at any time during the current or preceding year, or had compensation from the employer for the preceding year in excess of \$120,000 (for 2016-2018).

# IRC §402(c)

- There is a limited exception for distributions for IRC §402(b) trusts located outside the U.S. where the only failure to qualify under IRC §402(a) is that the trusts did not qualify for exemption under IRC §501(a) solely because the trust was not created or organized in the U.S.
- This only applies to distributions, not contributions, so contributions are still subject to the taxation rules under IRC §402(b)

# Non-HCE's v. HCE's

- Non-HCE's taxable only on employer contributions
  - Plan earnings are taxed when distributed
- HCE's taxed on increase in value of the plan during the year
  - This includes employer contributions plus any plan earnings

# IRC §409A and Foreign Plans

- IRC §409A exempts many foreign plans from its applicability:
  - Foreign social security plans that are government-mandated or covered by a U.S. Social Security Totalization Agreement.
  - Foreign plans which are covered by section 402(b), in which the plan assets are in trust and not exposed to the creditors of the funding employer, and therefore do not allow for a deferral under U.S. tax principles in any event.
  - Participation in certain foreign broad-based plans by a nonresident alien, a resident alien under the substantial presence test, or a bona fide resident of a U.S. possession.
  - Deferrals in respect of income that would be excluded under a treaty.
- Likely not to apply in the case of 402(b) plans, but worth checking



# US INCOME TAXATION OF UK PLANS

# Treaty Considerations

- Under IRC §402(b) as a general rule employer contributions are taxable to the employee when not subject to substantial risk of forfeiture
- The U.S. / U.K. income tax treaty exempts employer contributions and earnings from tax and defers taxation until the pension is actually received.

# Treaty Considerations

- Confirm that specific plan is covered by the treaty
  - For the U.S., the term "pension scheme" includes the following: qualified plans under section 401(a), individual retirement plans (including individual retirement plans that are part of a simplified employee pension plan that satisfies section 408(k), individual retirement accounts, individual retirement annuities, section 408(p) accounts, and Roth IRAs under section 408A), section 403(a) qualified annuity plans, and section 403(b) plans. 401(k) plans qualify as pension schemes because a 401(k) plan is a type of 401(a) plan.



# Treaty Considerations

- Confirm that specific plan is covered by the treaty
  - **For the U.K., qualifying plans are those approved as retirement benefit schemes for the purposes of Chapter I of Part XIV of the Income and Corporation Taxes Act 1988, and personal pension schemes approved under Chapter IV of Part XIV of that Act.**

# Treaty Considerations

- Watch out for savings clause limitations
  - For U.K. nationals, the U.S. / U.K. treaty only allows this exemption for contributions and earnings of U.S. plans as long as the individual does not become a U.S. citizen or resident
- Form 8833 must be filed to claim treaty exemption

# U.K. Pensions Qualifying for Relief Under the U.S./U.K. Income Tax Treaty

<b>Employee Plans</b>	<b>Employer Plans</b>
Personal Pension Plan (PPP)	Small Self Administered Scheme (SSAS)
Self Invested Pension Plan (SIPP)	Executive Pension Plan (EPP)
Additional Voluntary Contribution (AVC)	Stake Holder (Now moved into work place pensions)
Retirement Annuity (RAR)	Work Place Pensions (WPP)

# U.K. Pensions Not Qualifying for Relief Under the U.S./U.K. Income Tax Treaty

Employee Plans	Employer Plans
Qualifying Recognised Overseas Pension Scheme (QROPS)	<ul style="list-style-type: none"><li data-bbox="865 521 1758 635">• Funded Unapproved Retirement Benefit Scheme (FURBS)</li></ul>
Qualifying Non-UK Pension Scheme (QNUPS)	<ul style="list-style-type: none"><li data-bbox="865 678 1758 792">• Employer Funded Unapproved Retirement Benefit Scheme (EFURBS)</li></ul>

# REPORTING REQUIREMENTS

# Reporting Requirements

- **CAVEAT – in many cases, whether these reporting requirements apply depend on the specific fact pattern with which you are dealing**
- **Make sure you completely understand the situation before coming to a conclusion about the reporting requirements**
- **Due to the significant penalties for non-compliance with these reporting requirements, it is best to over-report rather than under-report**

# Reporting Requirements

- **These are the reporting requirements we will discuss today as these generally apply to U.K. pensions:**
  - **Forms 3520 and 3520-A (Foreign Trusts)**
  - **Form 8621 (Passive Foreign Investment Company or PFIC)**
  - **Form 5471 (Controlled Foreign Corporation)**
  - **Form 8938 (Foreign Financial Asset Reporting)**
  - **FinCEN 114 (Foreign Bank Accounts)**

# Reporting Requirements

- **Other forms also may be required in unusual situations, but are likely not relevant for purposes of today's discussion:**
  - **Form 5472, Information Return of a 25% Foreign Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business**
  - **Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation**
  - **Form 8865, Return of U.S. Persons with Respect to Certain Foreign Partnerships**
  - **Form 8858, Information Return of a U.S. Persons with Respect to Foreign Disregarded Entities**
- **Be aware of these in case any of these apply to a particular situation**



# Grantor Trust Considerations

- The grantor trust rules tax a grantor on trust income or income of a portion of the trust over which the individual:
  - **Has a reversionary interest in excess of 5 percent at its inception**
  - **Retains excessive powers to control the beneficial enjoyment of trust income and property**
  - **Holds prohibited administrative powers that enable him to deal in an advantageous way with trust property**
  - **Retains a power to revoke the trust**
  - **Either the individual or spouse has a right to receive trust income**
- In addition, foreign trusts with U.S. beneficiaries are generally treated as grantor trusts

# Grantor Trust Considerations

- As a result, foreign retirement plans not qualifying as an employee's trust, which are held in trust and have a U.S. beneficiary, will likely constitute grantor trusts unless an exception applies
- In addition, some IRC §402(b) plans may constitute grantor trusts:
  - Exemption from the grantor trust rules requires employee contributions be incidental, i.e. <50% employee contributions
  - Additionally, in situations where the foreign retirement plan is “self-funded” by the taxpayer, some or all of the plan will be considered a grantor trust

# Does Plan Constitute a Grantor Trust?

Grantor Trust in Most All Cases	Grantor Trust if Employee's contributions are not incidental (i.e., >50%)
Personal Pension Plan (PPP)	Small Self Administered Scheme (SSAS)
Self Invested Pension Plan (SIPP)	Executive Pension Plan (EPP)
Additional Voluntary Contribution (AVC)	Stake Holder (Now moved into work place pensions)
Retirement Annuity (RAR)	Work Place Pensions (WPP)
QROPS (Qualifying Recognised Overseas Pension Scheme)	Funded Unapproved Retirement Benefit Scheme (FURBS) - Now known as Employer Financed Retirement Benefit Scheme (EFRBS)
QNUPS (Qualifying Non-UK Pension Scheme)	Employer Funded Unapproved Retirement Benefit Scheme (EFURBS)

# Grantor Trust Considerations

- If the plan is considered a grantor trust , it is reportable on Form 3520, Annual Return to Report Transactions with Foreign Trusts and Receipt of Certain Foreign Gifts and Form 3520-A, Annual Information Return of Foreign Trust With a U.S. Owner
- If plan is considered an employees' trust, no reporting is required on Forms 3520 and 3520-A unless it is considered a grantor trust as discussed above

# Grantor Trust Considerations

- Form 3520 is used to report the following:
  - Certain transactions with foreign trusts,
  - Ownership of foreign trusts under the rules of sections 671 through 679, and
  - Receipt of certain large gifts or bequests from certain foreign persons.

# Grantor Trust Considerations

- Form 3520-A is used to report the following:
  - Information about the foreign trust;
  - Its U.S. beneficiaries;
  - Any U.S. person who is treated as an owner of any portion of the foreign trust under the grantor trust rules
  - Income Statement
  - Balance Sheet
  - Beneficiary Reportable Items

# Form 3520 Penalties

- A penalty generally applies if Form 3520 is not timely filed or if the information is incomplete or incorrect. The initial penalty is equal to the greater of \$10,000 or
  - 35% of the gross value of any property transferred to a foreign trust for failure by a U.S. transferor to report the creation of or transfer to a foreign trust or
  - 35% of the gross value of the distributions received from a foreign trust for failure by a U.S. person to report receipt of the distribution or
  - 5% of the gross value of the portion of the trust's assets treated as owned by a U.S. person for failure by the U.S. person to report the U.S. owner information

# Filing Considerations – Form 3520-A

- Complete Form 3520-A (including the Foreign Grantor Trust Owner Statement (page 3 of Form 3520-A) and the Foreign Grantor Trust Beneficiary Statement (page 4 of Form 3520-A)) must be filed with the Internal Revenue Service Center, P.O. Box 409101, Ogden, UT 84409, by the 15th day of the 3rd month after the end of the trust's tax year (March 15<sup>th</sup> for calendar year trusts)
- Provide copies of the Foreign Grantor Trust Owner Statement and the Foreign Grantor Trust Beneficiary Statement to the U.S. owners and U.S. beneficiaries by the 15th day of the 3rd month after the end of the trust's tax year (March 15<sup>th</sup> for calendar year trusts)



# Filing Considerations – Form 3520-A

- An extension of time to file an income tax return will not provide an extension of time to file Form 3520-A
- Form 7004 must be filed in order to request an extension of time to file Form 3520-A

# Form 3520-A Penalties

- A penalty generally applies if Form 3520 is not timely filed or if the information is incomplete or incorrect. The U.S. owner is subject to an initial penalty equal to the greater of \$10,000 or
- 5% of the gross value of the portion of the trust's assets treated as owned by the U.S. person at the close of that tax year
- Additional penalties will be imposed if the noncompliance continues for more than 90 days after the IRS mails a notice of failure to comply with the required reporting

# Form 8621 (PFIC) Reporting Considerations

- Has the plan invested in a stock of a PFIC?
  - A PFIC is foreign corporation which meets either the income or asset test described below.
    - Income test: 75% or more of the corporation's gross income for its taxable year is passive income (as defined in section 1297(b)).
    - Asset test: At least 50% of the average percentage of assets (determined under section 1297(e)) held by the foreign corporation during the taxable year are assets that produce passive income or that are held for the production of passive income

# Form 8621 Reporting Considerations

- Treaty Exemption
  - Exempts U.S. persons treated as the owner of any portion of a foreign grantor trust that is a foreign pension fund operated principally to provide pension or retirement benefits if, pursuant to an income tax treaty, income earned by the pension fund is taxed as income of the U.S. person only when and to the extent it is paid to or for the benefit of that person
  - Recent final IRS rules (T.D. 9806) eliminated requirement that pension plan be a trust

# Form 8621 Reporting Considerations

- Treaty Exemption
  - Relatively few income tax treaties to which the United States is a party provide this relief. These include the treaties with Belgium, Canada, Germany, Malta, the Netherlands, South Africa, Spain and the United Kingdom
  - Must also file Form 8833 to claim treaty exemption
  - Not excepted from reporting on Form 8938 however

# Form 8621 Reporting Considerations

For all other trusts, Treas. Reg. §§ 1.1291-1T(b)(8)(iii)(C) and (D) provide:

- If a foreign or domestic estate or nongrantor trust (other than a §401(a) tax exempt employees' trust) directly or indirectly owns stock, each beneficiary of the estate or trust is considered to own a proportionate amount of such stock.
- If a foreign or domestic trust directly or indirectly owns stock, a person that is treated under sections 671 through 679 as the owner of any portion of the trust that holds an interest in the stock is considered to own the interest in the stock held by that portion of the trust.

# Form 8621 Reporting Considerations

As a result, all non-treaty exempt trusts must file Form 8621

- Fortunately, most of the U.K. plans discussed here are treaty exempt and so no Form 8621 reporting is required
- However, for the few that are not treaty exempt, Form 8621 filing is required

# U.K. Pensions Subject to Form 8621 Reporting

## Form 8621 Reporting Required (Not Exempt Under Treaty)

Funded Unapproved Retirement Benefit Scheme (FURB)

Employer Funded Unapproved Retirement Benefit Scheme (EFURBS)

Qualifying Recognised Overseas Pension Scheme (QROPS)

Qualifying Non-UK Pension Scheme (QNUPS)



# U.K. Pensions Not Subject to Form 8621 Reporting

Form 8621 Reporting Not Required (Exempt Under Treaty)
Personal Pension Plan (PPP)
Self Invested Pension Plan (SIPP)
Additional Voluntary Contribution (AVC)
Retirement Annuity (RAR)
Small Self Administered Scheme (SSAS)
Executive Pension Plan (EPP)
Stake Holder (Now moved into work place pensions)
Work Place Pensions (WPP)



# Reporting Considerations - CFC Issues

- Is the plan held by a CFC?
  - Form 5471 should be filed
- Monetary Penalties:
  - A \$10,000 penalty is imposed for each annual accounting period of each foreign corporation for failure to furnish the required information within the time prescribed.
  - If the information is not filed within 90 days after the IRS has mailed a notice of the failure to the U.S. person, an additional \$10,000 penalty (per foreign corporation) is charged for each 30-day period, or fraction thereof, during which the failure continues after the 90-day period has expired.
  - The additional penalty is limited to a maximum of \$50,000 for each failure.

# Form 8938 Reporting Considerations

- Are the assets considered “Specified Foreign Financial Assets (SFFAs)”?
  - An interest in a social security, social insurance, or other similar program of a foreign government is not a specified foreign financial asset
  - However, retirement plan assets held by a nongovernmental institution are not exempt from reporting
  - SFFAs are reported on Form 8938, unless required to be reported elsewhere
  - Form 8938 has a failure to file penalty of \$10,000 plus additional \$10,000 penalty up to a maximum of \$50,000 for each 30 day period that failure to file continues after 90 days following IRS notice

# Form 8938 Reporting Requirements

Type of Plan	Form 3520 Filing Requirement	Form 3520-A Filing Requirement	Form 8621 PFIC Reporting Required?	Form 8938 Reporting Required?
Personal Pension Plan (PPP)	Yes	Yes	No, exempt under treaty	No, reported on Forms 3520 and 3520-A
Self Invested Pension Plan (SIPP)	Yes	Yes	No, exempt under treaty	No, reported on Forms 3520 and 3520-A
Additional Voluntary Contribution (AVC)	Yes	Yes	No, exempt under treaty	No, reported on Forms 3520 and 3520-A
Retirement Annuity (RAR)	Yes	Yes	No, exempt under treaty	No, reported on Forms 3520 and 3520-A

# Form 8938 Reporting Requirements

Type of Plan	Form 3520 Filing Requirement	Form 3520-A Filing Requirement	Form 8621 PFIC Reporting Required?	Form 8938 Reporting Required?
Small Self Administered Scheme (SSAS)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	No, exempt under treaty	Only if Not Considered a Grantor Trust
Executive Pension Plan (EPP)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	No, exempt under treaty	Only if Not Considered a Grantor Trust
Stake Holder (Now moved into work place pensions)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	No, exempt under treaty	Only if Not Considered a Grantor Trust

# Form 8938 Reporting Requirements

Type of Plan	Form 3520 Filing Requirement	Form 3520-A Filing Requirement	Form 8621 PFIC Reporting Required?	Form 8938 Reporting Required?
Work Place Pensions (WPP)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	No, exempt under treaty	Only if Not Considered a Grantor Trust
QROPS (Qualifying Recognised Overseas Pension Scheme)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	Yes, not exempt under treaty	Only if Not Considered a Grantor Trust or a PFIC
QNUPS (Qualifying Non-UK Pension Scheme)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	Yes, not exempt under treaty	Only if Not Considered a Grantor Trust or a PFIC

# Form 8938 Reporting Requirements

Type of Plan	Form 3520 Filing Requirement	Form 3520-A Filing Requirement	Form 8621 PFIC Reporting Required?	Form 8938 Reporting Required?
Funded Unapproved Retirement Benefit Scheme (FURBS)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	Yes, not exempt under treaty	Only if Not Considered a Grantor Trust or a PFIC
Employer Funded Unapproved Retirement Benefit Scheme (EFURBS)	Only if Considered a Grantor Trust	Only if Considered a Grantor Trust	Yes, not exempt under treaty	Only if Not Considered a Grantor Trust or a PFIC



# Form 8938 Filing Thresholds

Status	Total Value of all FFAs at end of Year	Maximum value of all FFAs at any time during year
Single and MFS – living in U.S.	\$50,000	\$75,000
Single and MFS – living outside the U.S.	\$200,000	\$300,000
MFJ – living in U.S.	\$100,000	\$150,000
MFJ – living outside the U.S.	\$400,000	\$600,000

# FBAR (FinCEN 114) Filing and Reporting Considerations

- Is the plan held in a foreign bank or financial account?
  - FBAR filing requirement – U.S. person with a financial interest in or signature authority over foreign bank and financial accounts

# What is a Financial Account?

- A financial account includes, but is not limited to, a securities, brokerage, savings, demand, checking, deposit, time deposit, or other account maintained with a financial institution (or other person performing the services of a financial institution).
- A financial account also includes a commodity futures or options account, an insurance policy with a cash value (such as a whole life insurance policy), an annuity policy with a cash value, and shares in a mutual fund or similar pooled fund (i.e., a fund that is available to the general public with a regular net asset value determination and regular redemptions).
- Due to the expansive definition of financial account, it is recommended that any account which might be considered a financial account be reported

# What is a Foreign Financial Account?

- A foreign financial account is a financial account located outside of the United States.
- For example, an account maintained with a branch of a United States bank that is physically located outside of the United States is a foreign financial account.
- An account maintained with a branch of a foreign bank that is physically located in the United States is not a foreign financial account.

# What is a Financial Interest?

A United States person has a financial interest in a foreign financial account for which:

- The United States person is the owner of record or holder of legal title, regardless of whether the account is maintained for the benefit of the United States person or for the benefit of another person;  
or

# What is a Financial Interest?

A United States person has a financial interest in a foreign financial account for which:

- The owner of record or holder of legal title is one of the following:
  - A trust of which the United States person: (i) is the trust grantor and (ii) has an ownership interest in the trust for United States federal tax purposes;
  - A trust in which the United States person has a greater than 50 percent present beneficial interest in the assets or income of the trust for the calendar year; or
  - Any other entity in which the United States person owns directly or indirectly more than 50 percent of the voting power, total value of equity interest or assets, or interest in profits.

# FBAR (FinCEN 114) Filing and Reporting Considerations

- FBAR reporting threshold = highest aggregate balance of all reportable foreign accounts is greater than \$10,000 USD at any time during the calendar year
- Penalties for the failure to file FBAR include:
  - \$10,000 civil penalty
  - Greater of \$100,000 or 50% of account balance for willful failure to file FBAR
  - Criminal penalties for willful failure to file FBAR

# FBAR (FinCEN 114) Filing and Reporting Considerations

<b>Plans Considered Grantor Trusts</b>	<b>Only If &gt;50% Interest In Trust Assets</b>
<b>Personal Pension Plan (PPP)</b>	<b>Small Self Administered Scheme (SSAS)</b>
<b>Self Invested Pension Plan (SIPP)</b>	<b>Executive Pension Plan (EPP)</b>
<b>Additional Voluntary Contribution (AVC)</b>	<b>Stake Holder (Now moved into work place pensions)</b>
<b>Retirement Annuity (RAR)</b>	<b>Work Place Pensions (WPP)</b>
<b>QROPS (Qualifying Recognised Overseas Pension Scheme)</b>	<b>Funded Unapproved Retirement Benefit Scheme (FURBS)</b>
<b>QNUPS (Qualifying Non-UK Pension Scheme)</b>	<b>Employer Funded Unapproved Retirement Benefit Scheme (EFURBS)</b>



# IRS AMNESTY PROGRAMS FOR FAILURE TO PROPERLY REPORT OFFSHORE ASSETS

# IRS Amnesty Programs for Delinquent Filers

- 2012 Offshore Voluntary Disclosure Program
- The IRS Offshore Voluntary Disclosure Program is working with taxpayers whose penalties may be reduced.
- The IRS began an open-ended OVDP in January 2012 because of strong interest in the 2009 and 2011 programs. The IRS may end the 2012 program at any time in the future.
- The IRS is offering taxpayers with undisclosed income from offshore accounts another opportunity to get current with their tax returns.
- The 2012 OVDP has a higher penalty rate than the previous programs, but offers clear benefits to encourage taxpayers to disclose foreign accounts now rather than risk detection by the IRS and possible criminal prosecution.

# IRS Amnesty Programs for Delinquent Filers

- Streamlined Filing Compliance Procedures
  - Eligibility criteria for the streamlined procedures
    - Taxpayers must certify that conduct was not willful.
    - IRS has not initiated a civil examination of taxpayer's returns for any taxable year.
    - Taxpayers eligible to use streamlined procedures who have previously filed delinquent or amended returns must pay previous penalty assessments.
    - Taxpayers who want to participate in the streamlined procedures need a valid Taxpayer Identification Number.

# IRS Amnesty Programs for Delinquent Filers

- Streamlined Filing Compliance Procedures for U.S. taxpayers
  - U.S. taxpayers (U.S. citizens, lawful permanent residents, and those meeting the substantial presence test of IRC section 7701(b)(3)) eligible to use the Streamlined Domestic Offshore Procedures must
    - For each of the most recent 3 years for which the U.S. tax return due date file amended tax returns, together with all required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621),
    - For each of the most recent 6 years for which the FBAR due date has passed (the “covered FBAR period”), file any delinquent FBARs (FinCEN Form 114, previously Form TD F 90-22.1),

# IRS Amnesty Programs for Delinquent Filers

- Streamlined Filing Compliance Procedures for U.S. taxpayers
  - Pay all tax and interest due, and
  - Pay a Title 26 miscellaneous offshore penalty.
    - The Title 26 miscellaneous offshore penalty is equal to 5 percent of the highest aggregate balance/value of the taxpayer's foreign financial assets that are subject to the miscellaneous offshore penalty during the years in the covered tax return period and the covered FBAR period.
  - The full amount of the tax, interest, and miscellaneous offshore penalty due in connection with these filings should be remitted with the amended tax returns.

# IRS Amnesty Programs for Delinquent Filers

- Streamlined Filing Compliance Procedures for non-resident U.S. taxpayers
  - Individual U.S. citizens or lawful permanent residents, or estates of U.S. citizens or lawful permanent residents, meet the applicable non-residency requirement if, in any one or more of the most recent three years for which the U.S. tax return due date (or properly applied for extended due date) has passed, the individual did not have a U.S. abode and the individual was physically outside the United States for at least 330 full days.

# IRS Amnesty Programs for Delinquent Filers

- Streamlined Filing Compliance Procedures for non-resident U.S. taxpayers
  - For each of the most recent 3 years for which the U.S. tax return due date file amended tax returns, together with all required information returns (e.g., Forms 3520, 3520-A, 5471, 5472, 8938, 926, and 8621),
  - For each of the most recent 6 years for which the FBAR due date has passed (the “covered FBAR period”), file any delinquent FBARs (FinCEN Form 114, previously Form TD F 90-22.1) and
  - Pay any tax and interest due.
  - There is no Title 26 miscellaneous offshore penalty

# IRS Amnesty Programs for Delinquent Filers

- Failure to file information returns with no tax due
  - Taxpayers who do not need to use the OVDP or the Streamlined Filing Compliance Procedures to file delinquent or amended tax returns to report and pay additional tax, but who:
    - have not filed one or more required international information returns,
    - have reasonable cause for not timely filing the information returns,
    - are not under a civil examination or a criminal investigation by the IRS, and
    - have not already been contacted by the IRS about the delinquent information returns
    - should file the delinquent information returns with a statement of all facts establishing reasonable cause for the failure to file.



# IRS Amnesty Programs for Delinquent Filers

- Failure to file FBAR returns
- Taxpayers who
  - have not filed a required Report of Foreign Bank and Financial Accounts (FBAR) (FinCEN Form 114, previously Form TD F 90-22.1),
  - Who reported all income for the foreign financial accounts on their tax returns,
  - Are not under a civil examination or a criminal investigation by the IRS, and
  - Have not already been contacted by the IRS about the delinquent FBARs
  - Should file the delinquent FBARs according to the FBAR instructions

**Tim Cook**  
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**Tim's passion lies in helping his clients maximise their wealth through successful tax planning for the future. Whether you are seeking a solution on the most efficient way to implement your inheritance plans or would simply like some plain-English advice on your tax liabilities, Tim is expertly placed to offer you a highly professional and personalised service.**

**Having previously worked for HMRC, Tim is able to use his insights to assist with HMRC investigations and ensure that you are informed at all times, and can offer you clear and simple advice throughout the process.**

**His technical areas of expertise include, tax planning, international relocation and trusts. Tim works with entrepreneurs, and families from a wide range of backgrounds, based both in the UK and overseas.**

**Tim joined Wilder Coe in 1996 and was made Tax Partner in 2001. He has been working in tax for 39 years, including 6 years with HMRC.**



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# About Integra International

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