



# IRS Tax Audits: Special Tax Compliance Rules/Foreign Activities

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# THE WOLFE LAW GROUP

Gary S. Wolfe has over 34 years of experience, specializing in IRS Tax Audits and International Tax Matters including: International Tax Planning/Tax Compliance, and International Asset Protection.

As of July 2016, Gary Wolfe has internationally published 15 books and 28 articles. Gary has received 14 international tax awards from five different Global expert societies in LONDON/UK including being voted one of the 100 leading world's law firms with votes from over 150,000 voters in over 160 countries with the following award: Global 100 (2016) (KMH Media Group) - CA/US International Tax Planning Law Firm of the Year.

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# **IRS Tax Audits: Special Tax Compliance Rules/Foreign Activities**

Ownership (legitimate) of foreign entities by US taxable residents and the inherent US reporting for these trusts, companies, partnerships, foundations, hybrid companies etc. is a virtual minefield in terms of compliance. The forms required are many and failure to report- or report correctly- can result in substantially punitive consequences. Clients and their advisors are well advised not to dabble in this area and seek out the required expertise. To do otherwise is to entertain significant risk with no upside.

Foreign Information Reporting for corporations, partnerships, transfers to & from foreign persons and foreign financial assets (over \$50k) have special tax reporting requirements under Forms 3520/8938.

For IRS audit purposes (tax assessment and collection), the general assessment statute of limitations is either:

- 1) 3 years after the tax return is filed (or tax is paid);
- 2) 6 years after the return is filed for 25% omission of gross income on the tax return (or \$5000 omission of gross income if such amount is attributable to one or more foreign financial assets required to be reported by IRC 6038D on Form 8938 (FATCA filing));
- 3) "Forever", in the case of fraud and/or failure to file (.ie. the Statute of Limitations is suspended).

Under the March 2010 Hiring Incentives to Restore Employment Act ("HIRE ACT"), the Foreign Account Tax Compliance Act ("FATCA") was implemented including the special tax rule for Foreign Activities IRC 6501 (c) (8), which amended the Code. The new tax rule amended the IRC 6501 (c) (8) exception to the general statute of limitations for disclosing foreign activities and made it applicable to the entire income tax return. Previously, this Code section applied just to the tax consequences related to the information reporting required under the relevant foreign information reporting provision.

The new rule became effective for any tax return filed after 3/18/10.

As long as a failure to comply with one of the specified foreign information reporting requirements for a tax return exists, the limitations period for that tax return remains open indefinitely. The statute will not commence to run until the time at which the information required under the reporting provision is filed with the IRS and will not expire before 3 years after the filing of the required information.

The general 3-year limitation period commences when a timely and complete tax return (including all information reporting) is filed. Without the inclusion of the foreign information reporting with the return, the limitation period does not commence until such time as the information reports required are subsequently provided to the IRS, even though the tax return has been filed. The taxes that may be assessed during the suspended or extended period are not limited to those attributable to adjustment to items to the information required to be reported (all items on the tax return are subject to audit and adjustment).

The Foreign Information Reporting Provisions include:

- 1) IRC 6038 for certain foreign corporations (Form 5471), foreign partnerships (Form 8865), foreign disregarded entities (Form 8858);
- 2) IRC 6038 A certain foreign owned US corporations (Form 5472)
- 3) IRC 6038 B certain transfers to foreign persons (Form 926)
- 4) IRC 6046 organization, reorganizations and acquisition of stock of foreign corporations (Form 5471)
- 5) IRC 6046A changes in interests in certain foreign partnerships (Form 8865)
- 6) IRC 1295 Qualifying Electing Fund elections by PFICs (Form 8621)
- 7) IRC 6038D Information with respect to foreign financial assets (Form 8938)

