



# Know Your Acronyms

## Ignorance of international tax rules is no excuse.

**G**lobalization is forcing many businesses and individuals to seek economic opportunities outside their home countries. This applies to businesses large and small. In fact, according to the Small Business Administration, since 2003, exporting activity by small businesses has increased by about 80 percent to account for approximately 30 percent of the United States' export revenues. When an American business decides to distribute its shoes in Germany, it may be prepared to navigate foreign laws and business traditions to reap the benefits of access to a new market. What many businesses may be unprepared for, however, is the United States international tax and reporting regime, and dealing with things like PFICs, CFCs, FBARs and FATCA.

**Failure to act on what is learned from the investigation could expose employees to potential hazards and expose employers to potential citations and fines.**

If you are operating or investing internationally, or intend to, you need to be aware of the U.S. tax and reporting rules associated with the abbreviations and acronyms listed above. These international tax rules are some of the most complicated in the Internal Revenue Code and, unfortunately, the Internal Revenue Service's international tax administration focuses on enforcement rather than services (or even simple resources) to foster compliance. The IRS continues to list enforcement of the international tax rules as a top priority and the penalties for noncompliance are severe.

As an overview, as an American resident business or individual, you will be subject to U.S. tax on your worldwide income regardless of where that income is earned. Generally, conducting business activity through a foreign corporation will defer U.S. tax on the foreign source income earned by that foreign corporation, though the U.S. owners of the foreign corporation must understand whether the foreign subsidiary is a controlled foreign corporation (CFC) or passive foreign investment company (PFIC). This distinction is important, as characterization of the foreign corporation as a CFC or a PFIC can eliminate the ability to defer U.S. tax, resulting in higher American tax rates on some types of income, and create an automatic interest charge as if the tax due had not been timely paid. Furthermore, your U.S. employees providing services abroad may have foreign country tax obligations in addition to their U.S. filing and reporting requirements.

Besides understanding how an American conducting foreign activities will be taxed in the U.S., U.S. businesses or individuals

operating abroad must also be prepared to manage a myriad of extremely complex U.S. tax reporting requirements. For example, if a U.S. business forms a foreign entity and capitalizes that entity with cash or other property, in addition to the business's annual U.S. income tax return the U.S. business, or its officers, directors or shareholders may be obligated to file any of the following:

- Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation
- Form 5471, Information Return of a U.S. Person with Respect to Certain Foreign Corporations
- Form 8865, Return of U.S. Person with Respect to Certain Foreign Partnerships
- Form 8858, Return of U.S. Person with Respect to Certain Foreign Disregarded Entities

Also, any U.S. person that has signatory authority over a foreign financial account, whether personal or in the name of the business, may have to file two substantially overlapping forms: Form TD F 90-22.1, Report of Foreign Bank and Financial Accounts (commonly known as the FBAR), which is filed with the Treasury Department, and new Form 8938, Statement of Specified Foreign Financial Assets (created by the Foreign Account Tax Compliance Act or FATCA), which is filed as an attachment to a U.S. taxpayer's annual return.

In addition to penalties that will apply for failure to pay taxes due, a failure to comply with the reporting requirements above, among others, can result in significant civil and potentially criminal penalties to the business, its officers, directors or shareholders, regardless of whether any tax is due.

If you are looking at expanding your business or investments into the international marketplace, make sure that you incorporate U.S. international tax and reporting compliance into your strategy for expansion. If you already participate in the global arena, make sure that you meet your U.S. tax obligations, and if not, learn about your options to come into compliance.

**PAIGE L. DAVIS** is a shareholder at Lane Powell, where she concentrates her practice on cross-border tax and business planning for U.S. and foreign entities. Davis works with clients to create efficient international investment structures from tax and legal perspectives. She counsels clients on all aspects of transactions, including formation, operation, exit strategies, mergers and acquisitions, financing and other business operations. She can be reached at 206.223.7137 or [davispl@lanepowell.com](mailto:davispl@lanepowell.com).